

6-24-80
Vol. 45 No. 123
Pages 42235-42588

Federal Register

Tuesday
June 24, 1980

Highlights

- 42235 Helen Keller Day** Presidential proclamation
- 42572 Grant Program—Education** ED publish regulations govern operation of National Direct Student Loan, College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, and Basic Educational Opportunity Grant Programs (Part IV of this issue)
- 42284 Grant Programs** ED issues regulations regarding Law School Clinical Experience Program
- 42586 Grant Programs—Education** ED amends regulations for the 1980-81 Family Contribution Schedules for the Basic Educational Opportunity Grant Program (Part V of this issue)
- 42365 Grant Program—Education** ED invites applications under the Rehabilitation Short-Term Training Grant Program of National Scope; apply by 8-8-80
- 42428 Loan Programs** Labor/PWBP reopens comment period to 7-9-80, on proposed class exemption permitting certain loans of securities by employee benefit plans

CONTINUED INSIDE



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Highlights

- 42244 Loan Program** USDA/CCC amends Farm Storage and Drying Equipment Loan Program regulations to implement an increase maximum loan amount; effective 5-13-80
- 42246 Gasoline** DOE clarifies the limitations imposed by the Mandatory Petroleum Allocation Regulations on sales of motor gasoline at retail sales outlets, and State governments authority to establish priorities in those sales
- 42472 Drinking Water** EPA publishes regulations to develop minimum requirements for State programs to protect underground drinking water sources from endangerment by the subsurface emplacement of fluids through well injection; effective 7-24-80 (Part II of this issue)
- 42303 Food Distribution** USDA/FNS proposes to amend regulations governing program to revise and strengthen provisions which permits agencies to employ commercial or institutional facilities to process USDA-donated foods; comments by 8-25-80
- 42514 Clean Air** EPA publishes rules establishing minimum required contents of initial primary nonferrous smelter orders; effective 7-24-80 (Part III of this issue)
- 42369 Banks** Federal Financial Institutions Examination Council gives joint notice of adoption of standard descriptive terms to be used in competitive factor reports prepared; effective 6-11-80
- 42370 Banks** Federal Financial Institutions Examination Council gives notice of uniform guideline on internal control for foreign exchange activities in commercial banks; effective 6-11-80
- 42341 Radiological Plan** FEMA issues its procedures for review and approval of State and local emergency plans and preparedness for coping with offsite effects of radiological emergencies which may occur at nuclear power facilities; comments by 8-25-80
- 42347 Computing Devices** FCC proposes to formalize methods of measurements and procedure for verifying compliance of electronic equipment; comments by 7-31-80; reply comments by 8-15-80
- 42419- Privacy Act Documents** Justice
42421
- 42436 Sunshine Act Meetings**

Separate Parts of This Issue

- 42472 Part II, EPA**
- 42514 Part III, EPA**
- 42572 Part IV, ED**
- 42586 Part V, ED**

Contents

Federal Register

Vol. 45, No. 123

Tuesday, June 24, 1980

- The President**
PROCLAMATIONS
42235 Helen Keller Day (Proc. 4767)
- Executive Agencies**
- Agricultural Marketing Service**
RULES
42242 Lemons grown in Ariz. and Calif.
PROPOSED RULES
42315 Filberts grown in Oreg. and Wash.
42313 Lemons grown in Ariz. and Calif.
42313 Peaches grown in Wash.
42314 Prunes (fresh) grown in Oreg. and Wash.
- Agricultural Stabilization and Conservation Service**
RULES
42242 Tobacco (Burley); market price and penalty rate
- Agriculture Department**
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Food and Nutrition Service; Forest Service; Rural Electrification Administration.
- Animal and Plant Health Inspection Service**
RULES
42237 Plant quarantine, Hawaiian and territorial: Hawaiian fruits and vegetables
- Army Department**
See Engineers Corps.
- Chrysler Corporation Loan Guarantee Board**
NOTICES
42436 Meetings; Sunshine Act
- Civil Aeronautics Board**
RULES
42254 Intrastate pairs of points (Calif., Tex., and Fla.); joint fares; policy statement
PROPOSED RULES
42317 Air carriers; notice to passengers of conditions of carriage; airline counter and ticket notices; extension of time
42318 Intermodal cargo services, domestic and foreign air carriers; liberalized regulations
NOTICES
Hearings, etc.:
42360 International Air Transport Association
42361 U.S.-Jordan show cause proceeding
- Commerce Department**
See National Oceanic and Atmospheric Administration; National Technical Information Service.
- Commodity Credit Corporation**
RULES
42244 Loan and purchase programs: Farm storage and drying equipment
- Commodity Futures Trading Commission**
PROPOSED RULES
42324 Reparation rules; complaint procedures, etc.
- Comptroller of Currency**
See Federal Financial Institutions Examination Council.
- Customs Service**
NOTICES
Bonds:
42433 Smelting and refining warehouses
- Defense Department**
See Engineers Corps.
- Drug Enforcement Administration**
RULES
Schedules of controlled substances:
42264 Dextropropoxyphene
- Education Department**
RULES
42586 Basic educational opportunity grant program; family contribution schedules
42284 Law school clinical experience program
42572 National direct student loan program, college work-study program, etc.; student assistance general provisions
NOTICES
Grant applications and proposals, closing dates:
42365 Rehabilitation short-term training projects of national scope
Meetings:
42365 Postsecondary Education Improvement Fund Board of Advisors
- Employment and Training Administration**
NOTICES
42423 Employment transfer and business competition determinations; financial assistance applications
Unemployment compensation; extended benefit periods:
42425 Alabama
42424 Illinois
42424 Washington
- Employment Standards Administration**
PROPOSED RULES
42332 Federal service contract labor standards; extension of time
- Energy Department**
See also Energy Research Office; Federal Energy Regulatory Commission.
RULES
Oil; administrative procedures and sanctions:
Interpretations
42248 Motor gasoline; allocation at retail sales outlets; clarification of limitations and priorities

- NOTICES**
Committee, establishment, renewals, terminations, etc.:
- 42368 Energy Research Advisory Board
- 42368 National Energy Extension Service Advisory Board
- International atomic energy agreements; civil uses; subsequent arrangements:
- 42367 Japan
- Meetings:
- 42367 National Petroleum Council
- Energy Research Office**
- NOTICES**
- 42368 Energy Research Advisory Board, Fusion Study Group; report availability
- Engineers Corps**
- NOTICES**
- Environmental statements; availability, etc.:
- 42364 Harbor Beach, Mich.; maintenance dredging
- Environmental Protection Agency**
- RULES**
- Air pollution programs:
- 42514 Nonferrous smelter orders, primary (NSOs); national rules
- Air quality implementation plans; approval and promulgation; various States, etc.:
- 42283 Illinois; correction
- 42279 Ohio
- 42265 Oregon
- Water pollution control:
- 42472 State underground injection control program; consolidated permit regulations and technical criteria and standards
- PROPOSED RULES**
- Air quality implementation plans; approval and promulgation; various States, etc.:
- 42338 Illinois
- 42340 Maine
- 42335 New Jersey
- 42339 North Carolina
- NOTICES**
- Water pollution; discharge of pollutants (NPDES):
- 42368 New York
- Federal Communications Commission**
- PROPOSED RULES**
- Communications equipment:
- 42347 Computing devices, compliance verification and methods of measurement
- NOTICES**
- 42436 Meetings; Sunshine Act (3 documents)
- Federal Deposit Insurance Corporation**
See Federal Financial Institutions Examination Council.
- Federal Election Commission**
- NOTICES**
- Indexes; availability
- 42369 Opinions and regulations
- Federal Emergency Management Agency**
- RULES**
- Flood insurance; communities eligible for sale:
- 42291- Alabama et al. (2 documents)
- 42300
- Flood insurance; communities eligible for sale: Louisiana et al.
- PROPOSED RULES**
- Flood elevation determinations:
- 42340 Pennsylvania; correction
- Preparedness:
- 42341 Radiological emergencies; State and local plans and preparedness; policy and procedures for review and approval
- NOTICES**
- Disaster and emergency areas:
- 42369 Pennsylvania
- Federal Energy Regulatory Commission**
- NOTICES**
- 42438 Meetings; Sunshine Act
- Federal Financial Institutions Examination Council**
- NOTICES**
- 42370 Commercial banks; foreign exchange activities, internal control; guideline
- 42369 Competitive factor reports; standard/descriptive terms; adoption
- Federal Railroad Administration**
- NOTICES**
- Meetings:
- 42432 Directed service applications, Rock Island and Milwaukee Railroads; guidelines and procedures
- Federal Reserve System**
See Federal Financial Institutions Examination Council.
- NOTICES**
- Applications, etc.:
- 42372 East Troy Bancshares
- 42374 First Railroad & Banking Co. of Georgia
- 42373 Flagship Banks, Inc.
- 42373 Mark Twain Bancshares, Inc.
- 42373 Mountain Banks, Ltd.
- 42373 Portales National Bancshares, Inc.
- 42372 Southeast Banking Corp. et al.
- Fine Arts Commission**
- NOTICES**
- 42364 Meetings
- Fish and Wildlife Service**
- NOTICES**
- 42381 Endangered and threatened species permits; applications
- Food and Drug Administration**
- RULES**
- Animal drugs, feeds, and related products:
- 42262 Novobiocin
- 42260 Records and reports on new animal drugs and antibiotics approved before June 20, 1963
- 42262- Tylosin (2 documents)
- 42263
- Color additives:
- 42255 Lead acetate; closing date postponed
- Human drugs:
- 42264 Dextropropoxyphene; classification as narcotic; cross reference

- 42256 Neomycin palmitate-trypsin-chymotrypsin ointment; final order on objections, hearing request, and termination of effective date postponement

NOTICES**Biological product licenses:**

- 42376 Philadelphia Biologics Center, Inc.

Human drugs:

- 42375 Barbiturate-analgesic combination drugs for oral use

Food and Nutrition Service**PROPOSED RULES****Food distribution program:**

- 42303 Distributing, subdistributing, and recipient agencies; processing of USDA-donated foods by commercial or institutional facilities

Forest Service**NOTICES**

- 42359 Timber sale contracts by third parties; proposed policy regarding completion

General Accounting Office**NOTICES**

- 42374 Regulatory reports review; proposals, approvals, violations, etc. (CAB)

Health, Education, and Welfare Department

See Health and Human Services Department.

Health and Human Services Department

See Food and Drug Administration; Public Health Service.

Heritage Conservation and Recreation Service**NOTICES**

Historic Places National Register; additions, deletions, etc.:

- 42381 Arizona
42381 Arizona et al.

Indian Affairs Bureau**PROPOSED RULES**

- 42332 Licensed Indian traders; consumer protection in isolated communities; extension of time

NOTICES

- 42380 Liquor and tobacco sale or distribution ordinance: Menominee Indian Reservation, Wis.

Interior Department

See Fish and Wildlife Service; Heritage Conservation and Recreation Service; Indian Affairs Bureau; Surface Mining Office.

International Trade Commission**NOTICES**

- 42438 Meetings; Sunshine Act

Interstate Commerce Commission**RULES**

Railroad car service orders; various companies:

- 42289 Atchison, Topeka & Santa Fe Railway Co.
42287- Chicago, Madison & Northern Railway Co. (2 documents)
42289 Chicago & Northwestern Transportation Co. (2 documents)
42287 Chippewa River Railroad Co.
42288

- 42289 Missouri-Kansas-Texas Railroad Co.

- 42287 Pend Oreille Valley Railroad, Inc.

- 42288 Wisconsin Central Railroad Co.

NOTICES

- 42400 Long and short haul applications for relief Motor carriers:

- 42401 Accounting and reporting requirements; waiver for Class I and Class II carriers of property

- 42383 Finance applications

- 42386 Fuel costs recovery, expedited procedures

- 42401 Permanent authority applications

- 42386, Petitions, applications, finance matters (including temporary authorities), alternate route deviations, intrastate applications, gateways, and pack and crate (2 documents)

- 42393, Railroad car service rules, mandatory; exemptions (3 documents)

- 42400 Railroad services abandonment:

- 42382 Central of Georgia Railroad Co.

Justice Department

See also Drug Enforcement Administration; Parole Commission

NOTICES

Pollution control; consent judgments:

- 42423 Huffman Finishing Co.

- 42419, Privacy Act; systems of records (3 documents)

- 42421

Labor Department

See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Mine Safety and Health Administration**PROPOSED RULES**

Coal mine health and safety:

- 42333 Respirable dust, surface work areas and surface coal mines; miners with pneumoconiosis employed at underground coal mines; sampling procedures, etc.; extension of time

NOTICES

Petitions for mandatory safety standard modifications:

- 42425 ASARCO, Inc.
42426 Black Diamond Coal Co.
42426 Consolidation Coal Co. (2 documents)
42426 Golden Oak Mining Co., Inc.
42427 Jim Walters Resources Inc.
42427 Sandy Fork Mining Co., Inc.
42427 Solar Fuel Co.

National Oceanic and Atmospheric Administration**NOTICES**

Meetings:

- 42362 Mid-Atlantic Fishery Management Council

National Technical Information Service**NOTICES**

- 42362- Inventions, Government-owned; availability for licensing (2 documents)
42363

National Transportation Safety Board**NOTICES**

- 42438 Meetings; Sunshine Act

Nuclear Regulatory Commission**NOTICES****Applications, etc.:**

- 42432 Metropolitan Edison Co.
 42431 Westinghouse Electric Co. et al.
 Meetings:
 42431- Reactor Safeguards Advisory Committee (3 documents)
 42432 documents)
 42439 Meetings; Sunshine Act

Parole Commission**NOTICES**

- 42439 Meetings; Sunshine Act

Pension and Welfare Benefit Programs Office**NOTICES****Employee benefit plans:**

- 42428- Prohibition on transactions; exemption
 42430 proceedings, applications, hearings, etc. (3 documents)

Postal Rate Commission**NOTICES**

- 42439 Meetings; Sunshine Act

Postal Service**NOTICES**

- 42439 Meetings; Sunshine Act

Public Health Service**NOTICES****Meetings:**

- 42374 Child Health Promotion Select Panel

Rural Electrification Administration**NOTICES****Loan guarantees, proposed:**

- 42360 Allegheny Electric Cooperative

Surface Mining Office**PROPOSED RULES****Surface coal mining and reclamation enforcement operations:**

- 42333 Permanent regulatory program; "surface coal mining operations"; definition

Transportation Department

See Federal Railroad Administration.

Treasury Department

See Customs Service; Federal Financial Examination Council.

Unemployment Compensation, National Commission**NOTICES**

- 42431 Meetings

Wage and Price Stability Council**NOTICES****Meetings:**

- 42364 Price Advisory Committee

MEETINGS ANNOUNCED IN THIS ISSUE**COMMERCE DEPARTMENT**

- 42362 National Oceanic and Atmospheric Administration, 7-9 through 7-11-80

COUNCIL ON WAGE AND PRICE STABILITY

- 42364 Price Advisory Committee, 7-9 and 8-13-80

EDUCATION DEPARTMENT

- 42365 Fund for the Improvement of Postsecondary Education, 7-17 through 7-19-80

ENERGY DEPARTMENT

- 42367 Refinery Capability Task Group and the Coordinating Subcommittee of the Committee on Refinery Flexibility, 7-1 and 7-21-80
 Energy Research Office—
 42368 Energy Research Advisory Board, Fusion Study Group, 5-23-80

FINE ARTS COMMISSION

- 42364 Meeting, 7-29-80

HEALTH AND HUMAN SERVICES DEPARTMENT

- Office of the Assistant Secretary for Health—
 42374 Select Panel for the Promotion of Child Health, 6-27 and 6-28-80

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

- 42431 Meeting, 6-28 through 6-30-80

NUCLEAR REGULATORY COMMISSION

- 42431 Reactor Safeguards Advisory Committee, Advanced Reactors Subcommittee, 7-9-80
 42431 Reactor Safeguards Advisory Committee, Fire Protection Subcommittee, 7-9-80
 42432 Reactor Safeguards Advisory Committee, Sequoyah Nuclear Plant Subcommittee, 7-9-80

TRANSPORTATION DEPARTMENT

- Federal Railroad Administration—
 42432 Meeting, 6-25-80

HEARINGS**AGRICULTURE DEPARTMENT**

- 42315 Agricultural Marketing Service—Filberts Grown in Oregon and Washington, 7-9-80

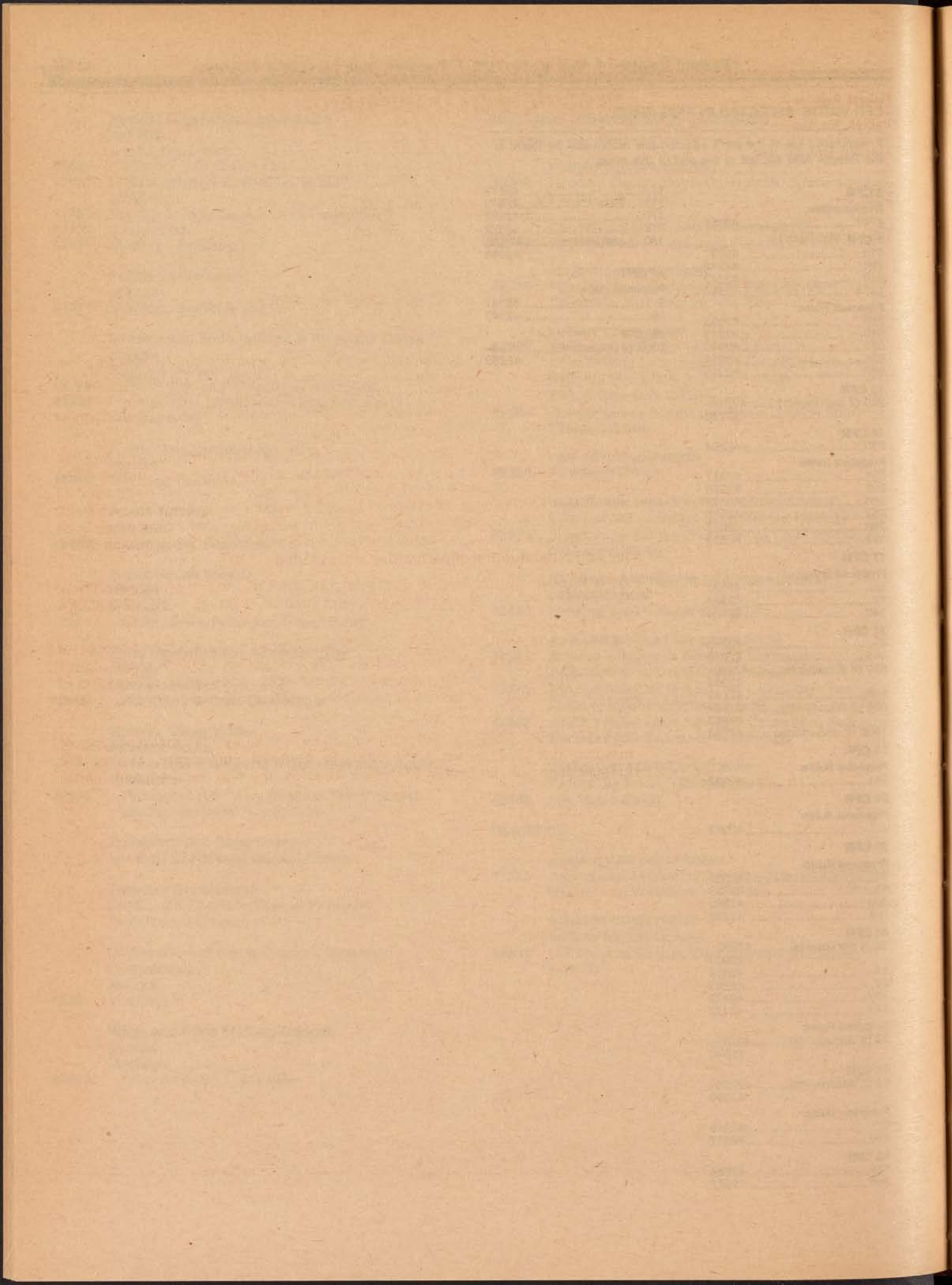
INTERIOR DEPARTMENT

- Surface Mining Office—
 42333 Definition of Surface Coal Mining Operations, 7-16-80

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR	174.....	42572
Proclamations:	175.....	42572
4767.....	176.....	42572
	177.....	42572
	190 (2 documents).....	42572, 42586
7 CFR		
318.....		42237
726.....		42242
910.....		42242
1474.....		42244
Proposed Rules:		
250.....		42303
910.....		42313
921.....		42313
924.....		42314
982.....		42315
10 CFR		
205 (2 documents).....		42246-42248
14 CFR		
399.....		42254
Proposed Rules:		
221.....		42317
222.....		42318
250.....		42317
255.....		42317
298.....		42317
385.....		42318
17 CFR		
Proposed Rules:		
1.....		42324
12.....		42324
140.....		42324
21 CFR		
81.....		42255
444.....		42256
510 (2 documents).....		42260-42262
556.....		42262
558 (3 documents).....		42262-42263
1308 (2 documents).....		42264
25 CFR		
Proposed Rules:		
251.....		42332
29 CFR		
Proposed Rules:		
4.....		42332
30 CFR		
Proposed Rules:		
71.....		42333
90.....		42333
700.....		42333
701.....		42333
40 CFR		
52 (3 documents).....		42265-42283
57.....		42514
81.....		42283
122.....		42472
146.....		42472
Proposed Rules:		
52 (4 documents).....		42335-42340
44 CFR		
64 (3 documents).....		42290-42300
Proposed Rules:		
67.....		42340
350.....		42341
45 CFR		
150.....		42284
168.....		42572



Presidential Documents

Title 3—

The President

Proclamation 4767 of June 19, 1980

Helen Keller Day

By the President of the United States of America

A Proclamation

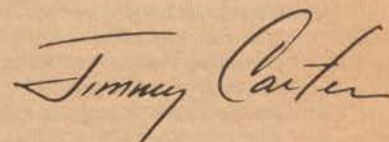
Stories of brave individuals battling seemingly insurmountable odds fire our imagination and pride as human beings. So it is with the remarkable life of Helen Keller. Her incredible fight against, and eventual triumph over, the multiple handicaps of deafness and blindness made her a world-famous symbol of hope for all handicapped people.

Today we honor the 100th anniversary of Helen Keller's birth. In so doing, we honor also the patience and understanding of her devoted teacher Anne Sullivan. Helen Keller refused to let her handicaps cut her off from a life of usefulness and service to others. Through her own determination and faith, she was able to develop and use her talents and demonstrate how much even the most severely handicapped individual can accomplish when proper training and rehabilitation opportunities are provided.

As a mark of respect for her achievements, the Congress, by joint resolution, has authorized the President to proclaim June 27, 1980, as "HELEN KELLER DAY".

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate June 27, 1980, as "HELEN KELLER DAY". I urge all appropriate Federal departments and agencies to foster the recognition of Helen Keller's achievements on that day with ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of June, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America, the two hundred and fourth.



Rules and Regulations

Federal Register

Vol. 45, No. 123

Tuesday, June 24, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

U.S. DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

Hawaiian and Territorial Quarantine Notices; Hawaiian Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

SUMMARY: This document takes the following actions concerning the Hawaiian fruits and vegetables regulations in 7 CFR Part 318:

1. Withdraws the proposed provisions to allow certain thick-skinned varieties of avocados to move from Hawaii to other parts of the United States subject to certain handling procedures in accordance with the stipulations of a compliance agreement and certification.
2. Withdraws the proposed provisions to allow mangoes to move from Hawaii to other parts of the United States after specified treatment for certain fruit flies.
3. Amends the list of fruits and vegetables which may move from Hawaii to other parts of the United States subject to inspection and certification to include broccoli, brussels sprouts, cauliflower, Jerusalem artichokes, and pineapple hybrids 53-116, 59-433, D10 and D20.
4. Retains the prohibition on the entry of swamp cabbage (unchoy) from Hawaii to other parts of the United States, and
5. Amends the regulations to apply them to the movement of fruits and vegetables from Hawaii to the Northern Mariana Islands.

These actions relieve restrictions which are no longer necessary to prevent the introduction and

dissemination of plant pests from Hawaii into other parts of the United States, and impose or retain restrictions which are necessary to prevent the introduction and dissemination of plant pests from Hawaii into other parts of the United States.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT:

H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, Maryland, 301-436-8247. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Background

On August 17, 1979, the Animal and Plant Health Inspection Service published a document in the *Federal Register* (44 FR 48230-48234) proposing to amend the Hawaiian fruits and vegetables regulations (7 CFR 318.13 *et seq.*). This document provided that written comments were to be received on or before October 1, 1979. A document published in the *Federal Register* on September 20, 1979 (44 FR 54518), extended the comment period to October 20, 1979; a document published in the *Federal Register* on October 5, 1979 (44 FR 57415), extended the comment period to November 9, 1979; and a document published in the *Federal Register* on November 9, 1979 (44 FR 65080), further extended the comment period to November 30, 1979. Also, in accordance with notices in these *Federal Register* documents, public hearings to consider the proposed amendments were held in Long Beach, California, on September 25 and 26, 1979; in New Orleans, Louisiana, on October 3 and 4, 1979; in Kailua-Kona, Hawaii, on October 24, 1979; and in Honolulu, Hawaii, on October 25, 1979.

Fifty-five persons made oral comments at the public hearings. Also, 24 additional written comments were submitted in response to the proposal. The comments were from 1 member of Congress, 4 representatives of Federal Government Agencies, 13 State Departments of Agriculture, 6 representatives of local governments, 8 representatives of universities, 22 representatives of fruit growers associations, 19 fruit growers, 1 consumer, 1 fruit wholesaler-retailer, 3 representatives of land management firms, and 1 pest control association. The relevant comments submitted pursuant to the proposal have been carefully considered and are discussed below.

Avocados and Mangoes

It was proposed to take certain actions with respect to the Hawaiian fruits and vegetables regulations. This included proposed provisions to amend the regulations concerning the movement of avocados and mangoes from Hawaii to other parts of the United States. Almost all of the written and oral comments submitted pursuant to the proposal related to these two issues. As further explained below, the proposed provisions relating to avocados and mangoes are not adopted and are withdrawn; however, the other provisions of the proposal are adopted as proposed.

With respect to avocados it was proposed to amend the regulations by adding a section to allow certain thick-skinned varieties of avocados to move from Hawaii to other parts of the United States subject to certain handling procedures. Under the current regulations, avocados in the raw or unprocessed state are allowed to be moved from Hawaii to other parts of the United States after a combination treatment of methyl bromide plus refrigeration, or for experimental or scientific purposes under certain safeguards; otherwise, avocados are prohibited from being moved from Hawaii into other parts of the United States. Specifically, it was proposed to add a new § 318.13-4g to allow the movement of avocados from Hawaii to other parts of the United States for any purpose as follows:

"Approved thick-skinned varieties of avocados for the purposes of this section are: Fujikawa, Itamzina, Linda,

Murashige, Nisihawa, Sharwil, and Yamagata. The following procedures are approved for the movement of approved thick-skinned varieties of avocados from Hawaii to other parts of the United States for Mediterranean fruit fly, the melon fly, and the oriental fruit fly, and the procedures shall be stipulated in a compliance agreement. Approved thick-skinned varieties of avocados are authorized to be moved in accordance with these procedures and without treatment when a compliance agreement is executed between the shipper of the fruit and the inspector.

(a) *Approved Handling Procedures.* (1) The avocados shall be picked mature green, with a portion of the stem remaining.

(2) Harvested avocados shall be protected from fruit flies by placing them immediately in field boxes or other type containers the openings of which are covered with double screen, 16 mesh or finer. Fruit shall be retained in such containers until it enters the packing facility.

(3) The open areas of the packing facility shall be enclosed with screen 16 mesh or finer to protect the harvested fruit from fruit flies.

(4) No other fruit fly host material shall be allowed in the packing facility. No fruit fly host fruit or vegetable shall be allowed within 100 feet of the packing facility. Fruit fly host material includes, but is not limited to, grapefruits, guavas, sweet and sour oranges, coffee, Surinam cherries, papayas, mangoes, lemons, and limes.

(5) When approved varieties are being shipped, the packing facility shall be used only for packing and shipping avocado fruit that meets the requirements of this section.

(6) Avocado culls and debris shall be stored in covered containers so as not to attract fruit flies, and shall be disposed of in a manner approved by the inspector, e.g., incineration or land fill.

(7) Each box of avocados shall be sealed and stamped with a certificate at the packing facility prior to shipment.

(b) *Supervision.* Handling procedures for the avocados shall be under the direction of an inspector.

(c) *Costs.* Costs of approved handling are the responsibility of the fruit owner or his representative. The services of the inspector during regular assigned hours of duty shall be furnished without cost.

Avocados in the raw or unprocessed state from Hawaii are known to be hosts of the mediterranean fruit fly (*Ceratitidis capitata* (Wiedemann)), the Melon fly (*Dacus cucurbitae* Coq.), and the oriental fruit fly (*Dacus dorsalis* Hendel). These fruit flies, which occur in Hawaii, are three of the world's most

destructive pests of fruits and vegetables and could cause serious economic losses to U.S. agriculture if they were to become established in noninfested areas.

Under the proposal, only specified thick-skinned varieties of avocados would be eligible for such movement from Hawaii to other parts of the United States. This was based on the assumption that the skin of certain thick-skinned varieties of avocados is not susceptible to infestation by these fruit flies if mature green because the thick skin if intact is impenetrable by the fruit flies. There were several written comments and many oral comments at the public hearings concerning this assumption. Some commenters cited studies for the purpose of establishing that the fruit flies could successfully penetrate the skin of mature green avocados of thick-skinned varieties and other commenters cited studies for the purpose of establishing that the fruit flies do not attack such avocados.

Studies referred to in the comments appear to establish that the fruit flies can penetrate the skin of thick-skinned mature green avocados under certain conditions, such as when caged fruit flies have only thick-skinned avocados available as host material. No studies were submitted or referred to which definitively establish that under natural conditions the fruit flies would likely penetrate the skin of thick-skinned avocados that were mature green. However, several commenters asserted that there would be a significant risk that the fruit flies would penetrate the skin of the thick-skinned avocados prior to being picked if there were bruises, cracks, punctures, or scars in the skin. It was also asserted by the comments that in many cases such defects would not be discovered by inspection. Based on Departmental expertise it is believed that there would not be a significant risk that fruit flies would be moved from Hawaii to other parts of the United States because of defects in such avocados. It is believed that most of these defects would be discovered by inspection and that the avocados with such defects could be culled out.

Several commenters asserted that the proposal is unworkable on a commercial basis because even assuming that the fruit flies would not penetrate thick-skinned avocados that were mature green, there is no feasible method for distinguishing thick-skinned avocados that are mature green from certain avocados not thick-skinned or not mature green. In support of this conclusion it was contended that

criteria has not been developed to determine at what point an avocado becomes riper than mature green, that it is extremely difficult for a person, even an expert, to determine the variety of an avocado based merely on a visual examination of the avocado, and that because of environmental differences some thick-skinned varieties of avocados could develop thin skins. Based on Departmental expertise, it appears that there is an unacceptable risk that fruit flies could penetrate into an avocado even prior to harvest if the avocado ripened beyond mature green or were other than thick-skinned. Considerable attention has been given concerning the establishment of a precise definition for the term mature green; however, the Department is not aware of a feasible definition at this time that would relate to risk of infestation of fruit flies. Also, for the reasons stated in the comments, the Department agrees that it would be difficult in many cases to make determinations concerning whether avocados were thick-skinned, and that mistakes could be made concerning avocados destined for movement from Hawaii to other parts of the United States. Accordingly, these comments appear to present good reasons for not adopting the proposed provisions relating to avocados.

As noted above, it was proposed to subject the avocados to stringent handling procedures in order to assure that they would not become infested with fruit flies. Some commenters asserted that the proposed handling procedures would be effective to prevent the avocados from becoming infested with the fruit flies, but many of the commenters expressed opposition. In opposition, commenters noted that under the proposal handling procedures would be required to be under the direction of an inspector and asserted that this could not be accomplished since a substantial portion of the avocados grown in Hawaii are grown in "backyards" at domestic residences. Other commenters asserted that the handling procedures would not be sufficient to assure that fruit flies would not accompany the avocados into the containers at the time they were opened to load the avocados, that fruit flies could enter packing facilities when the doors to the facilities were opened, and that prohibiting fruit fly hosts within 100 feet of a packing facility would not provide a sufficient distance between fruit fly hosts and packing facilities since fruit flies could easily travel 100 feet. These issues would need further consideration if a system were to be

implemented to allow the movement of untreated avocados from Hawaii to other parts of the United States.

Several commenters suggested that consideration should be given to allowing the entry of untreated avocados into areas of the mainland of the United States with colder climates, such as those above the 38th parallel. If this suggestion were to be adopted it should be as a result of a separate rulemaking proceeding since it would necessarily include provisions substantially different from the proposal. Under such a system it would be necessary to include a program to assure that such avocados would not be moved to climates where fruit flies would survive. Such a program has not been developed.

One commenter stated that if a mature, hard green avocado were infested with fruit flies, this would not cause any concern since the natural ripening process of an avocado produces ethylene gas which kills the fruit flies in the larvae stage. The Department does not agree with this comment. Although ethylene gas is produced by avocados during the ripening process, it does not have any insecticidal properties in amounts produced by avocados.

As noted above, it was proposed to require as part of the handling procedures that the avocados be picked with a portion of the stem remaining. One commenter asserted that the stem could be the means of carrying fruit flies since eggs could be deposited in the stem. Based on Departmental expertise this would not appear to be a serious concern. Eggs would not develop under such conditions since the stem would rapidly dry up and leave any hatching larvae without a food supply.

Commenters asserted that in addition to fruit flies avocados from Hawaii would also carry scales, mites, blackfly, and fire ant. Based on Departmental expertise it does not appear that there is a risk that avocados shipped from Hawaii to other parts of the United States would cause the introduction of the blackfly or the fire ant because avocados (fruits) are not hosts of the blackfly or the fire ant. Also, it does not appear that such avocados would cause the introduction of types of scales or mites not already widely prevalent within and throughout the United States.

With respect to mangoes, it was proposed to amend the regulations by adding a section to allow mangoes to

move from Hawaii to other parts of the United States after specified treatment. Under the current regulations, mangoes in the raw or unprocessed state are allowed to be moved from Hawaii into other parts of the United States for experimental or scientific purposes under certain safeguards; otherwise, mangoes are prohibited from being moved from Hawaii into other parts of the United States. Specifically it was proposed to add a new § 318.13-4h to allow the movement of such mangoes from Hawaii into other parts of the United States for any purposes as follows:

"The following treatment is approved for the movement of mangoes from Hawaii to other parts of the United States for the Mediterranean fruit fly, the melon fly, and the oriental fruit fly. Mangoes so treated and handled as provided in this section may be certified for movement from Hawaii to other parts of the United States.

(a) *Approved treatment.* The treatment shall consist of a hot water dip and ethylene dibromide fumigation.

(1) *Hot water dip*—Prior to fumigation, dip the mangoes in water heated to and maintained at 46° C. (115° F.) for 20 minutes. Then cool the mangoes with tap water at about 23° C. (74° F.) until the fruit pulp temperature reaches about 24° C. (76° F.). Heavily infested fruit becomes discolored after hot water dip and the fruit can be culled before fumigation.

(2) *Fumigation and Aeration*—Fumigate with ethylene dibromide at normal atmospheric pressure. Dosage is 16 g/m³ (16 oz./1000 ft³) for 2 hours at 21° C. (70° F.) or above. Fruit load shall not exceed 75 percent of chamber volume. Fumigate fruit in field boxes or slatted crates. Aerate for minimum of 2 hours immediately after fumigation.

(b) *Supervision and subsequent handling.* Treatment shall be applied under the direction of an inspector. Treated mangoes shall be safeguarded against reinfestation, e.g., stored in a screened or enclosed warehouse, prior to movement from Hawaii.

(c) *Costs.* Costs of treatment and post treatment safeguards are the responsibility of the owner of the mangoes or his representative. The services of the inspector during regularly assigned hours of duty shall be furnished without cost. Services of the inspector outside regularly assigned hours of duty would be furnished in accordance with 7 CFR Part 354.

Overtime Services Relating to Imports and Exports.

(d) *Department Not Responsible for Damage.* This treatment has been applied to ripe mangoes *Mangifera indica* (Pirie and Haden) only and no injury was observed. Tests should be conducted if other varieties are shipped. The Department assumes no responsibility for damage that may occur because of this treatment.

Mangoes in the raw or unprocessed state from Hawaii are known to be hosts of the Mediterranean fruit fly, the melon fruit fly, the oriental fruit fly, and the mango seed weevil (*Cryptorhynchus mangiferae* (Fabricius)). It appears that mangoes from Hawaii can be moved from Hawaii to other parts of the United States under the conditions set forth above in proposed § 318.13-4h without a significant risk of introducing the Mediterranean fruit fly, the melon fruit fly, or the oriental fruit fly, since the treatments specified in proposed § 318.13-4h appear to be adequate to destroy these insect pests. However, the treatments would not destroy the mango seed weevil, and it appears that there are no feasible methods for inspection or treatment, or other procedures for preventing the introduction into other parts of the United States of accompanying mango seed weevils if mangoes would be allowed to be moved from Hawaii to other parts of the United States in accordance with the proposal.

The mango seed weevil attacks mangoes in the following way. The female punctures the skin of the mango and lays eggs under the skin. The eggs hatch into larvae which burrow through the flesh and into the seed without discernible effect to the flesh. The insect completes its development to the adult stage in the seed. If the adult were to emerge from the seed, it would burrow through the flesh, and the adult and the secondary rot organisms would cause the mangoes to be unfit to eat.

The proposal indicated that proposed § 318.13-4h would not be adopted if information were presented to establish that the Hawaiian mango seed weevil infests fruits other than mangoes, or causes damage to the flesh of mangoes (44 FR 48232). One commenter cited studies to support the conclusion that mango seed weevil attacks six common fruits and vegetables other than mangoes, including beans, potatoes, apples, and plums. These studies apparently involved caging the mango seed weevils and providing such fruits and vegetables as the only host

material. Based on Departmental expertise, it appears that mango seed weevils could attack certain fruits and vegetables under such "forced conditions," but that they would not attack fruits and vegetables other than mangoes under natural conditions. However, statements given at the public hearings indicate that mango seed weevils cause damage to the flesh of mangoes in Hawaii. For example, Dr. Wallace Mitchell, a professor of entomology at the University of Hawaii, stated at a public hearing in Long Beach, California, that upon his examination of 150 mangoes in Hawaii he found that some of the mangoes had the mango seed weevil in the flesh. Further, at the public hearing in New Orleans, Dr. T. Nishida, a professor of entomology at the University of Hawaii, told of studies conducted by Dr. Wallace Mitchell which indicate that the mango seed weevil causes flesh damage in mangoes in Hawaii by causing premature ripening next to the seed. It was also pointed out at a hearing in Long Beach, California, by a research entomologist that a study conducted by L. B. Singh, entitled *The Mango*, supports the conclusion that mango seed weevils cause premature ripening of mangoes next to the seed. Under these circumstances it appears that the proposal to allow mangoes from Hawaii to move to other parts of the United States should not be adopted.

Several commenters asserted that there is a significant element of risk that the mango seed weevil could cause an even greater degree of flesh damage to mangoes in a new environment in the United States than it now causes in Hawaii. In this connection it was also asserted that the mango seed weevil could cause premature ripening prior to harvest which could possibly cause the fruit to fall prior to reaching maximum size. In addition, it was asserted that damage caused by the mango seed weevil in the form of premature ripening could be more pronounced in mangoes in a new environment since in Hawaii mangoes are customarily eaten shortly after being harvested, whereas in other parts of the United States mangoes are stored for periods of time prior to sale and consumption. The Department does not have sufficient information to make definitive determinations on these issues, and they would need further consideration if a system were to be implemented to allow the movement of mangoes from Hawaii to other parts of the United States.

Commenters also asserted that the proposal concerning mangoes should not be adopted since mangoes are grown from seeds in Florida nurseries, and the mango seed weevil attacks the seeds of mangoes and can prevent germination of the seed. Based on Departmental expertise, it is clear that the mango seed weevil can prevent the germination of mango seeds. Accordingly, if the seed weevil were to be transported from Hawaii into Florida it appears that it could affect seeds used to produce seedlings for mango root stock.

Several commenters asserted that provisions in the proposal should be adopted to allow the movement of mangoes from Hawaii into other parts of the United States regardless of damage to the seeds of mangoes or damage to the flesh of mangoes caused by the mango seed weevil. It was explained that mangoes from Hawaii are currently smuggled into other parts of the United States and that by allowing movements of mangoes treated in accordance with the proposal, smugglers would no longer be tempted to smuggle mangoes. It was further asserted that States in which mangoes are grown can take separate measures to prevent the introduction of mangoes from Hawaii. These arguments do not appear to be persuasive. It is not clear that the adoption of the proposal would be sufficient to stop attempts to transport mangoes from Hawaii to other parts of the United States without the proposed treatment. Further, the Department will continue to take action to prevent illegal movements of mangoes from Hawaii to other parts of the United States. Also, if the proposal to allow the movement of mangoes pursuant to treatment were adopted, it is questionable whether a program could be developed that would feasibly prevent movements of mangoes infested with the mango seed weevil to other mango producing areas in the United States.

Some commenters asserted that good sanitation, such as the prompt removal of decaying fruit that has fallen to the ground, would assure minimal mango seed weevil infestation. However, this does not appear to be an adequate basis for allowing the movement of mangoes since this would not be sufficient to prevent mango seed weevils from accompanying the mangoes.

Most of the commenters in favor of the proposed provisions concerning avocados and mangoes asserted that

adoption of these proposed provisions would help the economic growth of Hawaii. However, under the circumstances referred to above it appears that the proposed revisions concerning avocados could not be adopted without a significant risk of substantial damage caused by the introduction of the Mediterranean fruit fly, the melon fruit fly, and the oriental fruit fly, and that the proposed provisions concerning mangoes could not be adopted without a significant risk of substantial damage caused by the introduction of the mango seed weevil. Accordingly, these provisions are not adopted and are withdrawn. However, this does not preclude further consideration concerning ways to allow the movement of avocados and mangoes from Hawaii to other parts of the United States.

Also, it should be noted that several commenters asserted that the proposed provisions concerning avocados and mangoes should not be adopted because there were no sanctions or penalties for failure to comply with the proposed provisions. Had these provisions been adopted they would have been included in the Hawaiian fruits and vegetables regulations. Actions in violation of the provisions set forth in the regulations are in violation of the Plant Quarantine Act and constitute misdemeanors punishable by a fine not exceeding \$500 or by imprisonment not exceeding 1 year, or both such fine and imprisonment.

Miscellaneous

It was also proposed to approve Jerusalem artichokes, (*Helianthus tuberosus*); broccoli (*Brassica oleracea* var. *botrytis*); brussels sprouts (*Brassica oleracea* var. *gemmifera*); cauliflower (*Brassica oleracea* var. *botrytis*); and pineapple, hybrids 53-116, 59-433, D10, D20 (*Ananas sativa*) for movement from Hawaii to other parts of the United States subject to inspection and certification under § 318.13-4 of the regulations. This was in response to requests by commercial growers in Hawaii. As noted in the proposal, a review of scientific literature showed no evidence of pest risk with movement of these articles. Several written comments and oral comments presented at the public hearings expressed support for this portion of the proposal. No comments in opposition were submitted during the rulemaking proceeding, and the Department is not aware of any

evidence of a significant pest risk associated with movement of these articles. Under these circumstances, the regulations are amended to allow the specified categories of articles to move from Hawaii to other parts of the United States subject to inspection and certification under § 319.13-4 of the regulations. The final rule includes the scientific name in parenthesis for these articles; however, there are changes from the scientific names specified in the proposal. The scientific name "*Brassica oleracea* var. *botrytis*" for broccoli and cauliflower has been changed to "*Brassica oleracea* (Botrytis group)" and the scientific name "*Brassica oleracea* var. *gemmifera*" for brussel sprouts has been changed to "*Brassica oleracea* (Botrytis group)". These changes are made to reflect nomenclature currently accepted by the scientific community.

It was proposed to continue to prohibit the movement of swamp cabbage (unchoy) from Hawaii into the continental United States, Guam, Puerto Rico, the U.S. Virgin Islands, and the Northern Mariana Islands. This proposal is adopted. The action to prohibit such movement of swamp cabbage was taken on February 23, 1979, as an emergency action in order to prevent the introduction and dissemination of plant pests (44 FR 10700). This emergency action was taken following the discovery of larvae of the sweetpotato stem borer (*Omphisa anastomosalis* (Guenee)) and the West Indian sweetpotato weevil (*Euscepes postfasciatus* Fairmaire) on shipments of swamp cabbage grown in Hawaii. These pests reduce the yield and marketability of sweetpotatoes and other vegetables. Accordingly, 7 CFR 318.13 was amended by deleting "Cabbage, swamp (*Ipomoea reptans*)" from the list of fruits and vegetables in § 318.13-2(b) until such time as a public hearing could be held and written comments considered. Several written comments and oral comments presented at the public hearings expressed support for retaining this amendment. There was no opposition to this amendment during the rulemaking proceeding. The sweetpotato stem borer occurs in the United States only in Hawaii, and the West Indian sweetpotato weevil occurs in those parts of the United States other than the continental United States. Since these two pests could be moved in shipments of swamp cabbage and since there are no treatments known to be effective for destroying either of these pests without damage to the cabbage, it is necessary

to retain the amendment prohibiting the movement of swamp cabbage from Hawaii in order to prevent spread of the sweetpotato stem borer to all other parts of the United States and in order to prevent the spread of the West Indian sweetpotato weevil to the continental United States.

It was also proposed to add a definition of the United States to mean the States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States, and to include a reference to the Northern Mariana Islands in the definition of "moved (move and movement)" in § 318.13-1(i). These amendments are adopted as proposed. There were no comments submitted concerning this issue. The current regulations prohibit or restrict the importation of articles into the continental United States, Guam, Puerto Rico, and the Virgin Islands of the United States, because the provisions of the Plant Quarantine Act have been made applicable by Law to Guam, Puerto Rico, and the Virgin Islands of the United States, in addition to the States and the District of Columbia. However, pursuant to Pub. L. 94-241 (90 Stat. 263 *et. seq.*) and Presidential Proclamation 4534, the provisions of these Acts are also made applicable to the Northern Mariana Islands. The effect of these changes is to apply the Hawaiian fruits and vegetables regulations to the Northern Mariana Islands. It is necessary that the regulations be made applicable to the Northern Mariana Islands for the same reasons they are applicable to the continental United States.

It was further proposed that fruits, vegetables, and other products which are designated in § 318.13, which are not listed in § 318.13-2(b), and which are subject to certain approved handling procedures would be eligible for certification and movement if such handling procedures had been followed under the direction of an inspector and the person handling such fruits and vegetables had entered into a compliance agreement. These provisions are not adopted and are withdrawn. There were no comments or statements submitted specifically concerning these provisions. However, they were proposed solely for the purpose of implementing the proposed provisions relating to avocados. Since the proposed provisions relating to avocados are not adopted there is no need to adopt the proposed certification provisions.

Alternatives were considered in

connection with the actions reflected in the final rule.

With respect to the movement of avocados from Hawaii to other parts of the United States, the following alternative actions were considered:

1. Prohibit such movement.
2. Continue to permit movement after specified treatment.
3. Continue to permit movement after specified treatment and authorize movement of certain varieties of avocados subject to special handling procedures.
4. Authorize movement of all varieties subject to inspection and certification under the regulations.

Alternative "2" was chosen because such movements of avocados can be made after specified treatments without a significant risk of introducing pests into other parts of the United States, but it appears that relaxing the restrictions further would result in an unacceptable pest risk.

With respect to the movement of mangoes from Hawaii to other parts of the United States, the following alternative actions were considered:

1. Continue to prohibit such movement.
2. Authorize such movement after specified treatment.
3. Authorize such movement subject to inspection and certification under the regulations.

Alternative "1" was chosen because it appears that there are not feasible methods for inspection or treatment, or other procedures for preventing a significant pest risk.

With respect to the movement of Jerusalem artichokes, broccoli, brussel sprouts, cauliflower, and pineapple hybrids 53-116, 59-433, D10, and D20 from Hawaii to other parts of the United States, the following alternative actions were considered:

1. Continue to prohibit such movement.
2. Authorize such movement subject to inspection and certification under the regulations.

Alternative "2" was chosen because there does not appear to be a significant pest risk with movement of these articles.

With respect to the movement of swamp cabbage from Hawaii to other parts of the United States, the following alternative actions were considered:

1. Continue to prohibit such movement.
2. Authorize such movement subject to inspection and certification under the regulations.

Alternative "1" was chosen because of the pest hazard to crops in other part of the United States posed by the movement of swamp cabbage.

Under the circumstances referred to above, the Hawaiian fruits and vegetables regulations in 7 CFR Part 318 are amended in the following respects:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. In § 318.13-1, a new paragraph (o) is added to read as follows:

§ 318.13-1 Definitions.

(o) *United States*. The States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

2. In § 318.13-1(i), the definition of "Moved (move and movement)" is revised to read as follows:

§ 318.13-1 [Revised]

(1) * * *

Moved (move and movement). Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved, directly or indirectly, from Hawaii into or through the continental United States, Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands of the United States. Local, intrastate movement is in no way affected by the regulations in this subpart. ("Move" and "movement" shall be construed accordingly.)

§ 318.13-2 [Amended]

3. In § 318.13-2(b), artichokes, Jerusalem (*Helianthus tuberosus*); broccoli (*Brassica oleracea* (Botrytis group)); brussel sprouts (*Brassica oleracea* (Gemifera group)); cauliflower (*Brassica oleracea* (Botrytis group)); and pineapple hybrids 53-116, 59-433, D10, and D20 (*Ananas sativa*) are added in alphabetical order.

(Secs. 8 and 9, as amended; 37 Stat. 318, as amended, sec. 106; 71 Stat. 33; (7 U.S.C. 161, 162, 150ee, 37 FR 28464, 28477 as amended; 38 FR 19141)

Done at Washington, D.C., this 18th day of June 1980.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 80-19024 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Stabilization and Conservation Service

7 CFR Part 726

[Amdt. 14]

Burley Tobacco; Burley Tobacco 1972-73 and Subsequent Marketing Years 1979-80 Average Market Price and 1980-81 Penalty Rate

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule contains the average market price received by producers for the 1979-80 marketings and the penalty rate for excess tobacco for the 1980-81 marketing year. The penalty rate is 75 percent of the previous year market average, as required by Section 314 of the Agricultural Adjustment Act of 1938, as amended.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT: Harry D. Millner, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7935.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant." J. A. Wells, Director, Production Adjustment Division, Agricultural Stabilization and Conservation Service, has determined that an emergency exists which warrants publication of this rule without opportunity for public comment because producers, warehousemen, and dealers need to know immediately the 1980-81 marketing year penalty rates for the marketing of excess tobacco (tobacco produced in excess of 110 percent of the farm marketing quota), so that production and marketing decisions can be timely made. Since the 1979-80 average market price producers received for burley tobacco and the rate of penalty reflect mathematical computations rather than substantive changes, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest, and good cause is found for making this emergency final action

effective upon publication in the Federal Register.

Final Rule

PART 726—BURLEY TOBACCO

Accordingly, 7 CFR Part 726 is amended by revising § 726.86(c) to read as follows:

§ 726.86 Rate of Penalty.

(c)(1) *Average market price*. The average market price as determined by the Crop Reporting Board for the marketing years specified were:

Average Market Price

Marketing year:	Cents per pound
1974-75	92.9
1975-76	113.7
1976-77	114.2
1977-78	120.0
1978-79	131.0
1979-80	145.2

(2) *Rate of penalty per pound*. The penalty per pound for marketing of excess tobacco subject to marketing quotas during the marketing years specified shall be:

Rate of Penalty

Marketing year:	Cents per pound
1975-76	85
1976-77	79
1977-78	86
1978-79	90
1979-80	98
1980-81	109

(Sec. 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, 72 Stat. 995, sec. 401, 63 Stat. 1505, as amended, sec. 106, 122, 125, 70 Stat. 191, 195, 198, as amended, sec. 16(e), 76 Stat. 606 (7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836) (16 U.S.C. 590 p(e))

Signed at Washington, D.C., on June 17, 1980.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-19008 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the rules and regulations of the marketing order to establish an exemption to allow

a grower to sell lemons which the grower produces directly to consumers without regard to volume and size regulations which may be issued under the order, and makes minor changes in procedures governing exemption from order regulations of lemons handled in certain types of shipments, such as gift fruit.

DATE: Effective August 1, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Final Impact Statement describing options considered in developing this final rule and the impact of each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." On May 28, 1980, notice was published in the Federal Register (45 FR 35829) inviting written comments on a proposed amendment to the rules and regulations (Subpart—Rules and Regulations; 7 CFR 910.100-910.180) currently effective pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. None were received. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The amendment of said rules and regulations was unanimously recommended by the Lemon Administrative Committee, established under the order as the agency to administer its terms and provisions.

Section 910.180(d) of the rules and regulations established under the order prescribes procedures governing the exemption from order regulations of lemons handled in minimum quantities and certain types of shipments. The principal change would establish an exemption to allow a grower to sell lemons which the grower produces directly to consumers without regard to volume and size regulations that may be issued under the order. Under the amendment, each grower would be required to apply to the committee for exemption from such regulations and furnish necessary information to the committee. The amendment is designed to facilitate the direct marketing of lemons to consumers.

The amendment would also make minor changes in procedures governing

the exemption from order regulations of lemons handled in certain types of shipments, such as gift fruit. The amendment is intended to clarify the intent of this provision and recognize in the exemption the newer methods of express package delivery. The amendment would also delete the exemption authority in § 910.180(d)(1). This provision allowed a grower to apply for an exemption from regulations based on circumstances such as being unable to find a handler willing to market the grower's fruit. The committee reports that the exemption to permit growers to sell their fruit directly to consumers should provide a practical alternative.

After consideration of all relevant matters presented, including the proposal in the notice and other available information, it is hereby found that amendment of said rules and regulations is in accordance with the marketing agreement and order and will tend to effectuate the declared policy of the act.

Therefore, § 910.180 *Lemons not subject to regulation* is amended as follows:

§ 910.180 [Amended]

1. Paragraph (d) by deleting subparagraph (1), revising subparagraph (2), and redesignating subparagraphs (2) and (3) as subparagraphs (1) and (2), respectively.

2. By adding a new paragraph (e).

Paragraph (d), as amended, and new paragraph (e) would read as follows:

§ 910.180 Lemons not subject to regulation.

* * * * *

(d) *Minimum quantities and types of shipments.* (1) Any person who desires to distribute lemons as gifts, to market or distribute lemons as gift packages, or to ship lemons in containers or in a manner not customarily used by lemon handlers (e.g., parcel post, or express by truck or railroad) directly to consumers, shall file with the committee an application for exemption from regulation for such shipments. Such application shall contain the following information: (i) name and address of the applicant; (ii) the type of shipment or container for which an exemption is requested; (iii) the estimated volume of lemons to be handled in such type of shipments during a marketing season; (iv) the outlets to which such shipments are to be made; and (v) a statement of the applicant's reasons why such shipments should be exempted from regulation. Such application should be referred to the committee's Compliance Department for investigation and upon

receipt of the investigation report the committee shall determine if an exemption should be granted to the applicant. The committee shall notify the applicant in writing of its determination.

(2) The handling of lemons to approved livestock feeders and livestock feed suppliers shall be exempt from regulations. All shipments to approved livestock feeders and livestock feed suppliers shall be reported to the committee on LAC Form 5, pursuant to § 910.170(b). Any person who desires to acquire lemons to feed such person's own livestock, to buy, for the purpose of resale, or to handle for a fee, lemons for use as livestock feed, shall, prior thereto, file with the committee an application and agreement therefor on LAC Form 104A, which shall contain the following information: (i) name and address of the applicant; (ii) an agreement that the lemons obtained for use as livestock feed shall be used for that purpose only and not be resold, disposed, of, or in any way handled so as to enter fresh fruit channels; (iii) an agreement to promptly submit such reports at such times as may be required by the committee; and (iv) if a broker or dealer, that person's federal or state commodity license number. The application shall be signed by the applicant or an authorized employee of the applicant. Upon receipt, the application will be referred to the committee's Compliance Department for investigation. When completed, the report of the investigation shall be given to the committee; and based thereon and upon other available information, the committee shall approve or disapprove the application and notify the applicant accordingly. If the application is approved, the name of the applicant shall be placed on the list of approved livestock feeders and livestock feed suppliers. Misuse of the provisions as herein provided, or failure to promptly submit reports as may be required under paragraph (d)(2)(iii) of this section shall be cause for the for immediate removal of such person's name from the list of approved livestock feeders and livestock feed suppliers.

(e) *Grower exemption.* Any grower, other than a grower whose principal occupation is that of food distribution, who desires to sell lemons which the grower produces direct to consumers without regard to volume and size restrictions, shall file with the committee at the beginning of each marketing season an application for exemption on LAC Form 105C. Such application shall show: (i) the name and address of the grower; (ii) the location at

which the grower desires to sell lemons to consumers; (iii) the estimated quantity of lemons which will be sold in this manner during the marketing year; and (iv) evidence that the grower's principal occupation is not that of food distribution. The grower shall be notified in writing of the action taken by the committee on the application. Upon approval of the application, the grower may sell lemons produced by the grower direct to a consumer with regard to the restrictions of volume or size prescribed pursuant to Order No. 910. This exemption shall not apply to sales of lemons made at a packinghouse.

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).)

Dated June 19, 1980, to become effective August 1, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

FR Doc. 80-19010 filed 6-23-80; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1474

[CCC Farm Storage and Drying Equipment Loan Program Regs., Amdt. 3]

Farm Storage and Drying Equipment Loan Program Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Farm Storage and Drying Equipment Loan Program regulations to implement an increase in the maximum loan amount from \$50,000 to \$100,000, as required by recent legislation, and to incorporate previously implemented program changes. Major changes have included an increase in the loan repayment period from 5 years up to a maximum of 8 years; the inclusion of loans for storage structures for high moisture forage, silage, and grain; the inclusion of loans for solar grain drying systems, and; the inclusion of loans for remodeling existing facilities.

EFFECTIVE DATE: May 13, 1980.

ADDRESS: Director, Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Dean L. Spearman, Chief, Facility Loan Branch, Price Support and Loan Division, ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447-9221. A Final Impact Statement describing the options considered in implementing the increase in the loan amount from \$50,000

to \$100,000 is being developed and will be available from Dean L. Spearman.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has not been classified as "significant." Jerome F. Sitter, Director, Price Support and Loan Division, ASCS, has determined that an emergency exists which warrants publication of this rule without opportunity for public comment because farmers are well into the season for construction needed storage and drying facilities for the coming crop as well as for additional facilities needed in anticipation of placing grain into the farmer-owned grain reserve. Further, it is found upon good cause that compliance with the notice and other public participation procedures of 5 U.S.C. 553, including the 30-day effective date provisions, are impracticable and contrary to the public interest because the announced changes relieve previous restrictions for program participations. Comments are not being solicited on this emergency document. However, the Agency is planning to publish a proposed general revision of the regulations later this year at which time comments will be solicited on proposed changes as well as on the changes incorporated by this rule. Comments received will be considered in preparing this general revision.

Loans to farmers for storage and drying facilities have been available since 1949 under authority in Sec. 4(h) and Sec. 5(b) of the Commodity Credit Corporation (CCC) Charter Act, as amended.

In the spring of 1977, the Department announced major changes in program provisions to encourage farmers to build additional on-farm storage facilities. Changes included reducing the downpayment from 30 to 15 percent, increasing the maximum loan amount from \$25,000 to \$50,000, making foundation and wiring costs eligible for loan, basing storage needs on two years' production rather than one year, and providing for a constant interest rate for the life of the loan. Later that year, loans for high moisture storage facilities were authorized and the maximum term for loans was increased from five years to eight years. These changes were consistent with Pub. L. 95-113, approved September 29, 1977, which amended Sec. 4(h) of the Commodity Credit Corporation (CCC) Charter Act. Earlier this year, Pub. L. 234 was enacted which further amended Sec. 4(h) of the CCC Charter Act by requiring an increase in the maximum loan amount from \$50,000

to \$100,000. Secretary Bergland issued a press release authorizing this increase effective May 13, 1980. Therefore, § 1474.8 is revised to increase the maximum loan and aggregate outstanding loan balance from \$50,000 to \$100,000.

PART 1474—FARM STORAGE FACILITIES

Changes previously implemented by the Commodity Credit Corporation require revisions of the following:

1. Section 1474.4 to:
 - (a) Include within the definition of "eligible borrower" any person who as landowner, landlord, tenant, or sharecropper produces corn, oats, barley, grain sorghum, wheat, rye, soybeans, flaxseed, rice, dry edible beans, peanuts, sunflower seed or high moisture forage and silage.
 - (b) Provide that in determining need for dry storage, existing capacity being utilized to store grain under a grain reserve agreement may be excluded.
2. Section 1474.5 to:
 - (a) Include structures for the storage of high moisture grain or high moisture forage and silage within the definition of "eligible storage."
 - (b) Include solar grain drying systems within the definition of "eligible drying equipment."
 - (c) Authorize loans for the remodeling of existing facilities.
3. Section 1474.6 to establish the maximum term of a loan at eight years from the date of the Promissory Note and Security Agreement.

Final Rule

Accordingly, 7 CFR Part 1474 is amended as follows:

- (1) Section 1474.4 is revised to read as follows:

§ 1474.4 Eligible borrower.

(a) *Basic requirements.* The term "eligible borrower" means any person who as landowner, landlord, tenant, or sharecropper (1) produces one or more of the following commodities, hereinafter called "eligible commodities": Corn, oats, barley, grain sorghum, wheat, rye, soybeans, flaxseed, rice, dry edible beans, peanuts, sunflower seed, high moisture forage and silage, and (2) needs farm storage or drying equipment for the storage or conditioning of one or more such eligible commodities. If two or more eligible borrowers join together in the purchase and erection, installation, or construction of eligible farm storage or drying equipment, each such borrower shall sign all documents and shall be liable jointly and severally for payment of the loan. The term "person" means

any individual or individuals competent to enter into a binding contract, partnership, firm, joint-stock company, corporation, association, trust, estate, or other legal entity, or a State, political subdivision of a State, or any agency thereof.

(b) *Need for storage or equipment.* At the time any loan application is being considered, the county committee shall determine if the proposed farm storage or drying equipment is needed for the storage or conditioning of eligible commodities produced on the farm(s) to which the loan application relates: *Provided, however,* That in making this determination (1) one year's estimated production of eligible commodities shall be used in determining whether the proposed drying equipment is needed, (2) the maximum storage space for which a loan may be made shall be the amount by which the total capacity of existing storage on the farm(s) which is suitable for storage of eligible commodities is less than the storage capacity necessary to store two years' production (computed on the basis of estimated yields) of all eligible commodities produced on the farm(s) to which the loan application relates, and (3) existing storage being used to store grain under the Grain Reserve Program with CCC shall not be counted as existing storage capacity. If the capacity of the storage to be purchased or erected by the applicant exceeds the need as determined above, the application may be approved, but the amount of such loan shall not exceed the maximum authorized in § 1474.8(b).

(2) Section 1474.5 is revised to read as follows:

§ 1474.5 Eligible storage or drying equipment.

(a) *Basic requirements.* Loans shall be made only for the purchase and installation of eligible storage or drying equipment, or for remodeling existing facilities, as provided in this section.

(1) Eligible storage means: (i) New or newly constructed conventional-type cribs, bins or flat structures designed and engineered for dry grain storage, (ii) flat storage structures designed and engineered for multipurpose use which are adapted or modified for use as grain storage. (If only a portion of the structure is for use as grain storage, the area or space used for grain storage must be isolated or closed off from other use areas and only the pro rata costs of the portion of space used for grain storage shall be included in determining the amount of the loan), (iii) oxygen-limiting and other upright silo-type structures designed for wet storage, (iv) horizontal or bunker type concrete silo

structures of either a commercial pre-fab or constructed under approved State Extension Service plans, and (v) used structures (including the real estate where located, if any) if purchased from CCC or sold by CCC under provisions of a security agreement.

(2) Eligible drying equipment means: (i) New continuous-flow type dryers; (ii) new drying systems with wagons or trailers as integral parts thereof (peanut drying systems); (iii) new batch or in-store drying systems (including integral parts and equipment) using heated or unheated air; (iv) new equipment which conditions or facilitates drying by aerating, circulating, or stirring the commodity; (v) new solar drying systems or collectors which are: (A) Commercially constructed and designed for grain drying, (B) homebuilt systems designed for grain drying constructed under plans developed, recommended or approved by SEA, USDA, or by a State Extension Service; and (C) multiple use systems (commercial or homebuilt) with one of the intended uses being for grain drying; and (vi) used drying equipment (including the real estate upon which such equipment is located, if any) if purchased from CCC or sold by CCC under the provisions of a security agreement.

(b) *Additional requirements or provisions.* (1) If the farm storage or drying equipment is purchased from a source other than CCC, the supplier must be approved under Supplier's Agreement, Form CCC-308, before the loan is approved. CCC may also require the supplier to certify to the costs of the items and amounts paid and unpaid before the loan is disbursed.

(2) Storage or drying equipment shall not have been delivered to the farm more than 30 days prior to the date of the application for the loan.

(3) Loans may include only the cost of new materials and off-farm labor to be used in constructing new storage or drying equipment, or in the remodeling of existing facilities.

(4) Loans may be approved for the purchase of used storage or drying equipment only when the storage or drying equipment is purchased from CCC.

(5) Storage structures shall not be of a type (such as bags or snow fences) which require the weight or bulk of the commodity stored to maintain its shape.

(6) Storage structures must, in the opinion of the county committee, have a usable life of at least 10 years.

(7) Loans for storage and drying equipment may include handling and operating equipment considered essential to the practical operation of the storage unit or drying unit. EXCEPT:

(i) Eligible equipment in the case of oxygen-limiting or other upright silo structures shall be limited to basic filling and unloading equipment and (ii) no handling or operating equipment shall be eligible for use with bunker, horizontal or trench silos.

(8) Loans may also be approved to add individual items of handling and operating equipment to an existing storage or drying unit when the county committee determines such items are needed to make the existing unit more practical or efficient. EXCEPT: (i) Eligible equipment in the case of oxygen-limiting or other upright silo structures shall be limited to basic filling and unloading equipment and (ii) no handling or operating equipment shall be eligible for use with bunker, horizontal or trench silos.

(9) Loans may be approved for financing additions or modifications to an existing storage or drying unit to increase capacity or efficiency provided the county committee determines that: (i) The modification is necessary to increase capacity or efficiency of the unit and, in the opinion of the county committee, the modification is not maintenance, repair, or the mere replacement or installation of such items as motors, fans, wiring, or foundations, and (ii) the structure is not a horizontal or bunker type silo.

(10) Storage or drying equipment must include ladders and safety devices as the county committee may require and must be suitable for the storing and drying of the commodities for which need is determined.

(c) *Loans not available.* Loans shall not be available to provide storage or drying equipment for commercial use or for the storing or drying of commodities which the borrower intends to purchase, or to store or dry for others. Any storage or drying equipment which is located in working proximity to any commercial storing or drying operation shall be deemed to be a part of such operation.

(3) Section 1474.6 is revised to read as follows:

§ 1474.6 Term of loan.

The maximum term of the loan shall be eight years from the date of the Promissory Note and Security Agreement. The term of an individual loan, however, may be extended and reextended for terms of not to exceed one year each if the approving State or county committee determines in writing that the borrower is unable to meet the current payment when due because of conditions beyond the borrower's control.

(4) Section 1474.8 is revised to read as follows:

§ 1474.8 Amount of loan and loan application approvals.

(a) *Cost.* The cost on which the loan shall be based is the "net cost" of the storage and equipment, and/or related materials and services, which is the actual cost to the applicant, after deduction of any discount or rebate. Net cost may include the purchase price, local sales taxes payable by purchaser, costs for transportation, delivery, site preparation, erection or installation, and the cost of materials and labor for concrete work and electrical wiring. Net cost shall not include the cost of used or secondhand material, or the cost for labor performed by the applicant or other labor usually employed on the farm.

(b) *Amount of loan.* The amount of any loan, when added to the outstanding balance of any previous loan for storage or drying equipment, shall not result in an aggregate outstanding balance in excess of \$100,000 and shall not exceed the smaller of: (1) 85 percent of the net cost of the applicant's needed storage or drying equipment, or (2) the prorated cost for the applicant's storage which is needed and suitable for the storage of the applicable commodities when a storage structure has a larger capacity than the applicant's needed capacity.

(c) *Loan application approvals.* (1) The county committee may approve or disapprove loan applications for amounts less than \$25,000 (or lesser amounts established by the State committee) without concurrence of the State committee. However, the amount thereof, plus the outstanding balance of any previous loan, may not create for the applicant an aggregate outstanding balance of \$25,000 or more.

(2) The State committee shall approve or disapprove all other loan applications.

(3) A loan application for \$25,000 or more shall not be approved unless the applicant will provide the additional security in accordance with § 1474.7(c).

(4) A loan application shall not be approved where the approving authority determines that approval would not be in the best interest of the program.

(d) *Expiration of approvals.* If there has been no disbursement of the loan 4 months after the date the loan application was approved, the approval shall become null and void unless it is extended in writing by the approving State or county committee for a stated period not to exceed an additional 4 months: *Provided, however,* That the Executive Vice President, CCC, or his designee, may extend the approval for

such additional periods of time as he may deem justified by the circumstances.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714(b) and (c)))

Signed at Washington, D.C., on June 18, 1980.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-19007 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF ENERGY

10 CFR Part 205

Allocation of Motor Gasoline at Retail Sales Outlets; Ruling

AGENCY: Department of Energy.

ACTION: Ruling.

SUMMARY: The appended Ruling is issued by the Department of Energy (DOE) Office of General Counsel pursuant to 10 CFR 205.150 to clarify the limitations imposed by the Mandatory Petroleum Allocation Regulations on sales of motor gasoline at retail sales outlets, and the authority of State governments to establish priorities in those sales. A written comment of objection to the appended Ruling may be filed at any time with the DOE Office of General Counsel pursuant to the provisions of 10 CFR 205.153.

DATE: This Ruling issued June 13, 1980.

FOR FURTHER INFORMATION CONTACT: Jack P. Caolo, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 5E052, Forrestal Building, Washington, D.C. 20585, (202) 252-2931.

Issued in Washington, D.C.

Dated: June 18, 1980.

Merrill F. Hathaway, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings.

10 CFR is amended by adding to the Rulings appearing at the end of Chapter II the following Ruling 1980-2 to read as follows:

Ruling 1980-2

Allocation of Motor Gasoline at Retail Sales Outlets

I. Introduction

The Department of Energy (DOE) has received numerous complaints and inquiries regarding discrimination by sellers of motor gasoline at retail sales outlets. During periods in which motor gasoline is in short supply, discriminatory treatment among purchasers has the effect of withdrawing

gasoline from the public market. Granting preferential treatment to selected purchasers disadvantages the general public. Purchasers not engaged in an activity entitled to an allocation level¹ are denied equitable access to motor gasoline when sellers employ illegal discriminatory practices. Such practices frustrate the Mandatory Petroleum Allocation Program, which is based on the equitable distribution of allocated petroleum products among all purchasers. See section 4(b)(1)(F) of the Emergency Petroleum Allocation Act of 1973, as amended Pub. L. No. 93-159 (November 27, 1973) (EPAA). This Ruling is therefore intended to clarify, with particular emphasis on retail sales outlets of motor gasoline, the provisions of the regulations that require sellers equitably to distribute allocated products to all purchasers. This Ruling also addresses certain limited situations in which retail gasoline sellers may establish priorities for certain categories of purchasers, and in which State governments may require or authorize such priorities pursuant to authority delegated under DOE regulations.

II. Mandatory Petroleum Allocation Program for Motor Gasoline

Section 2(b) of the EPAA sets forth as the overall purpose of the Act to minimize the effect of shortages or dislocations of refined petroleum products on the economy and the American people.² In furtherance of this purpose, section 4 of the Act directs the President to promulgate regulations to accomplish the Act's enumerated objectives to the maximum extent practicable. Among those objectives is the equitable distribution of refined petroleum products throughout the United States.³ Implementing regulations are intended to distribute all allocated products in an equitable manner by establishing certain priority uses.

¹ The DOE provides priorities in the form of "allocation levels" to users engaged in certain activities. The allocation levels for motor gasoline are set forth in 10 CFR 211.103.

² Section 2(b) of the EPAA provides: The purpose of this Act is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system. The authority granted under this Act shall be exercised for the purpose of minimizing the adverse impacts of such shortages or dislocations on the American people and the domestic economy.

³ See section 4(b)(1)(F) of the EPAA, which states that the regulations shall provide for:

* * * equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users * * *

Specifically, 10 CFR 210.62(b) prohibits discrimination by all sellers of allocated products. As indicated in Ruling 1974-6, 39 FR 6111 (February 19, 1974), certain forms of preferential treatment are not considered to frustrate or impair the objectives or purposes of the EPAA and therefore do not constitute discrimination for purposes of § 210.62(b).⁴

Section 210.62(b) provides:

No supplier shall engage in any form of discrimination among purchasers of any allocated product. For purposes of this paragraph, "discrimination" means extending any preference or sales treatment which has the effect of frustrating or impairing the objectives, purposes and intent of this chapter or of the Act, and includes, but is not limited to, refusal by a retail marketer of motor gasoline or diesel fuel to furnish or sell any allocated product due to the absence of a prior selling relationship with the purchaser, or establishment of new volume purchase arrangements where customers or retailers agree in advance to purchase in excess of normal amounts of motor gasoline or diesel fuel and thereby receive preferential treatment. (Emphasis added.)

The DOE and its predecessors have also recognized the importance and desirability of giving appropriate priority to certain purchasers of motor gasoline. Accordingly, various subparts of the Mandatory Petroleum Allocation Regulations applicable to specific allocated products set forth priority allocation levels. With respect to motor gasoline, § 211.103 grants to specified categories of wholesale purchaser-consumers and end-users that qualify as bulk purchasers the right to purchase specified volumes of motor gasoline from their base period suppliers.⁵

Section 211.103(d) provides in part that end-users which are not bulk purchasers and purchasers not entitled

to an allocation level shall be supplied in accordance with the provisions of § 211.10(d)(2). The regulations provide in § 211.10(d)(1) for a first priority to purchasers entitled to an allocation level, and § 211.10(d)(2) requires that the supplier "distribute equitably the remainder of the supplier's allocable supply among all end-users or wholesale purchaser-consumers which are not entitled to an allocation level. . . ." (Emphasis added.)⁶

Therefore, absent action by DOE or State governments to establish priorities among retail purchasers in accordance with §§ 211.10(d) and 211.103, as discussed in Section III of this Ruling, and except for sales to purchasers entitled to an allocation level under § 211.103, retail gasoline dealers must make motor gasoline available for sale to all purchasers on an equitable basis, without discrimination.

Examples

The following examples address typical situations involving retail gasoline marketing. These examples are not exhaustive and are meant only to be illustrative of violations of § 210.62(b). All of the firms in the examples are retail marketers of motor gasoline, and none of the purchasers (including the commercial customers) are bulk purchasers.

Each example is also based on the assumption that no governmental action of the type described in § III of this Ruling has been taken in the jurisdiction in which a firm conducts its business.

1. Firm A has recently instituted a practice of allowing "regular" customers to be served before other customers waiting in line to be served at the seller's pumps. Previously and during the base period, Firm A sold gasoline on a "first-come, first-serve" basis.

Firm A is in violation of the express language of § 210.62(b), which prohibits discriminating in favor of "regular" customers, i.e., those with a "prior purchasing relationship." The firm must serve the public on a "first-come, first-serve" basis, i.e., all customers must wait their turn in line to purchase gasoline if that was the firm's mode of operation during the base period.

2. Firm B sold motor gasoline on a "first-come, first-serve" basis during the base period and now sells by appointment only. The number to call for appointments is prominently displayed at the retail sales outlet.

The effect of Firm B's practice is to discriminate against non-local customers in violation of § 210.62(b), because a gasoline-by-appointment-only system favors regular and local purchasers who are in a better position to schedule their gasoline purchases in advance while non-local customers, especially traveling motorists, are unable to do so. As the new appointment system was not in effect during the base period, it also violates § 210.62(a).

3. Firm C operates a parking lot as well as a retail sales outlet for motor gasoline and historically sold motor gasoline to any member of the public. The firm recently instituted a practice of selling motor gasoline only to customers that parked their cars in the parking lot.

Firm C's practice not only constitutes discrimination under § 210.62(b) in favor of patrons of its parking lot in which space is necessarily limited, but also violates § 210.62(d), which prohibits the sale of gasoline contingent upon the purchase of any other service. Firm C may not refuse to sell motor gasoline to any interested purchaser during whatever normal business hours it currently maintains for retail sales of motor gasoline.

4. A group of investors proposes to form an entity, Firm D, to purchase a retail sales outlet from Firm E and to sell or transfer all of its motor gasoline only to members of the group or other individuals selected by Firm D.

Firm D's proposal would violate § 210.62(b) because it would discriminate in favor of privately selected members and purchasers of motor gasoline by directing transfers of motor gasoline only to those customers. In addition, the investors would not succeed to the allocation entitlement for the retail sales outlet, since by so altering the basic commercial practices of their predecessor, the investors would have failed to establish the same ongoing business required by § 211.106(e) for a transfer of allocation entitlement of a successor on the site.

III. Establishment of Allocation Priorities at Retail Sales Outlets by State Governments

Section 211.10(d) is addressed to the supply obligations of a supplier whose purchasers are end-users or wholesale purchaser-consumers, when these purchasers include some purchasers that are entitled to an allocation fraction and others that are not. This regulation establishes that the first priority of each supplier is to fulfill its obligation to those purchasers entitled to an allocation fraction in accordance with

⁴ Ruling 1974-6 explained that the following practices did not frustrate or impair the objectives or purposes of the EPAA:

(1) Uniform application of a State "odd-even" sales program for motor gasoline;

(2) Application of the allocation regulations to make priority allocation levels of motor gasoline available to certain categories of purchasers;

(3) Compliance with a State set-aside order to make certain amounts of gasoline available to a particular purchaser; and

(4) Continuation of a preference in sales of motor gasoline which was established before the effective date of the Mandatory Petroleum Allocation Regulations, by which a firm extended preferential treatment to commercial accounts and bulk purchasers for commercial uses, provided that the preference is not implemented in such a way as to circumvent the objectives of the allocation program.

⁵ As defined in § 211.51, the term "wholesale purchaser-consumer" is limited to include only purchasers that receive delivery of the particular allocated product in their own storage tanks. "End-user" is defined in § 211.51 as "an ultimate consumer of an allocated product other than a wholesale purchaser-consumer."

⁶ That part of § 211.10(d)(2) not quoted here authorizes the establishment of certain priorities for retail purchasers of allocated products, including motor gasoline, by State governments and is addressed in § III of this Ruling.

§ 211.10(c) and further provides, in pertinent part:

The second priority for each supplier shall be to distribute equitably the remainder of the supplier's allocable supply among all end-users or wholesale purchaser-consumers which are not entitled to an allocation level. A state may require or authorize priorities to or among such end-users or wholesale purchaser-consumers purchasing the allocated product for the uses listed in the allocation levels for that product in the subpart of this part applicable to the particular allocated product. (§ 211.10(d)(2)).

With respect to motor gasoline, priority uses and the allocation levels to which they are entitled are set forth in § 211.103.

Based on § 211.10(d)(2) a State may establish priorities for purchasers and require or authorize sellers to supply them on a priority basis. The State may, for example, establish a priority for purchasers driving vehicles involved in emergency services or passenger transportation services, as listed in § 211.103(b) and defined in § 211.51, by exempting such purchasers from any maximum purchase limitations imposed on all other purchasers. The State may allow sellers to serve such priority purchasers outside of the hours during which others may purchase motor gasoline, or the State may direct that such priority purchasers not have to wait in line with other purchasers to be served. The State is not required to grant priority treatment to all of the uses listed for the allocation levels in § 211.103 or to arrange priorities in the order set forth in that provision. Section 211.10(d)(2) merely enables a State to respond to its particular needs by establishing priorities with respect to end-users that are not otherwise entitled to allocation levels and whose uses correspond to those listed in § 211.103 (b) and (c).

The State may not adopt its own priority levels, i.e., give priority at retail sales outlets for uses other than those specifically listed in § 211.103 (b) and (c). Furthermore, it should be noted that this regulation is supplemented by the State set-aside program (set forth in § 211.17) and by other specific delegations of authority made to the States by the executive branch. One such delegation has taken the form of an executive order of the President permitting States to establish odd-even license plate plans for designated purchasers of motor gasoline.⁷

⁷Executive Order No. 12140, 44 FR 31159 (May 31, 1979), as amended by Executive Order No. 12162, 44 FR 56665 (October 2, 1979), delegated authority to the Governors to establish an odd-even license plate plan, to require minimum purchases of gasoline, and to regulate the hours and days of operation for retail sales outlets.

A State may establish priorities either by utilizing existing State authority or by utilizing the authority delegated to States by § 211.10(d)(2). Section 501 of the Department of Energy Organization Act, Pub. L. No. 95-91 (August 4, 1977) applies to a State's use of delegated authority to achieve the objectives of the EPAA. Such official action should be taken in writing, and full notice of that action should be given to the public and to all sellers affected.

When establishing priority treatment for certain purchasers in accordance with § 211.10(d)(2), State governments are exempted from the prohibitions of § 210.62. In that regard, Section 211.10(d)(2) states:

Priority treatment, per se, when granted in accordance with the provisions of this subparagraph, shall not be considered a form of discrimination among purchasers or any other prohibited conduct under § 210.62 of this chapter.

This provision therefore permits sellers to provide preferential treatment to priority end-users where directed by their State government in accordance with § 211.10(d)(2).

Issued in Washington, D.C., on June 13, 1980.

Lynn R. Coleman,
General Counsel.

[FR Doc. 80-18914 Filed 6-23-80; 8:45 am]
BILLING CODE 6450-01-M

10 CFR Part 205

Administrative Procedures and Sanctions; 1980 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached are interpretations and responses to petitions for reconsideration issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period May 10, 1980 through June 15, 1980.

Appendix C identifies those requests for interpretation which have been dismissed during the same period.

FOR FURTHER INFORMATION CONTACT: Diane Stubbs, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 5E052, Washington, D.C. 20585, (202) 252-2931.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the *Federal Register* in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February

8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation or ruling interpreted thereby to the extent that the interpretation is inconsistent with the amended regulation or ruling (§ 205.85(e)). The interpretations published below are not subject to administrative appeal.

The responses to petitions for reconsideration published herein have been issued in accordance with the provisions set forth in 10 CFR 205.85(f). It should be emphasized that the reconsideration procedure is not the equivalent of an administrative appeal, but merely provides a mechanism to insure that no inadvertent errors are made which affect the validity of the interpretation.

Issued in Washington, D.C., June 18, 1980.
Merrill F. Hathaway, Jr.,
Acting Assistant General Counsel for Interpretations and Rulings.

Appendix A.—Interpretations

No.	To	Date	Category	File No.
1980-10.	Chevron U.S.A. Inc.	June 2.	Allocation.....	A-299
1980-11.	Standard Oil Company (Indiana)	June 11.	Allocation.....	A-490
1980-12.	Cities Service Company.	June 12.	Price.....	A-291

Interpretation 1980-10

To: Chevron U.S.A. Inc.
Regulations Interpreted: 10 CFR 210.21; 211.67(d)(2)
Code: GCW-AI—Entitlements Program;
Export Sales Deduction

Facts

Chevron U.S.A. Inc. (Chevron), a wholly-owned subsidiary of Standard Oil Company of California (Socal) and thus part of the same "firm," as defined in 10 CFR 212.82, submitted this request for interpretation. Chevron is a refiner as defined in 10 CFR 212.31 and 211.62. In January 1978, through various entities affiliated with Socal, Chevron transferred Bunker C fuel oil to the port of Balboa, Panama Canal Zone. At the port of Balboa, approximately 24,000 barrels of the Bunker C fuel oil were sold to various buyers for use as marine fuel on voyages departing from the port of Balboa. Chevron seeks an interpretation that it need not

reduce its volume of crude oil runs to stills under the entitlements program by this volume of Bunker C fuel oil.

Issue

Is the port of Balboa, Panama Canal Zone, a "United States port" for purposes of 10 CFR 211.67(d)(2), thereby releasing Chevron from any obligation to reduce its volume of crude oil runs to stills in accordance with that provision to account for these sales of Bunker C fuel oil in the Panama Canal Zone?

Interpretation

For the reasons set forth below, we have determined that Chevron's export sales made in the Panama Canal Zone for use as marine fuel on voyages departing from Balboa are not sales from a "United States port" as that term is used in 10 CFR 211.67(d)(2). Chevron must therefore reduce its volume of crude oil runs to stills by this volume of Bunker C fuel oil in accordance with the provisions of 10 CFR 211.67(d)(2).

The export sales deduction provides for an adjustment in calculating entitlement obligations and is contained in § 211.67(d)(2), which provides:

The volume of a refiner's crude oil runs to stills in a particular month for purposes of the calculations in paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio shall be reduced by that refiner's volume of export sales under § 212.53 of Part 212 of this chapter in that month of refined petroleum products (including aviation fuels as defined in § 211.142 of this part, but excluding refined lubricating oils) and residual fuel oil, including sales to a domestic purchaser which certifies the product is or export; provided, however, that the volume of a refiner's crude oil runs to stills for a month shall not be reduced by that refiner's volume of export sales of Bunker C and Navy Special fuel oils and No. 4 diesel, which are sold for use as a marine fuel on a voyage departing from a United States port. (Emphasis added.)

While Chevron expressly admits that the sales in question are "export sales" as that term is used in 211.67(d)(2), Chevron seeks an interpretation that the term "United States port" used in the proviso to that regulation must be interpreted to include Balboa, a port within the Panama Canal Zone, despite the definition of "United States" in 10 CFR 210.21 that expressly excludes the Canal Zone from the "United States" for purposes of the Mandatory Petroleum Allocation and Price Regulations. Under the requested interpretation, Chevron would not be required to reduce the volume of its crude oil runs to stills by the volume of the Bunker C fuel oil in question, since such fuel would have been sold for use as a marine fuel on a voyage departing from a United States port.

Chevron has not shown that the interpretive result which it advocates in reference to these export sales, which are exempt from price controls,¹ is consistent with the express language of the definition of "United States" in 10 CFR 210.21 or with the

underlying purpose of the entitlement regulations. The United States is defined in 10 CFR 210.21 as follows:

"United States" means the several States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States other than the Panama Canal Zone. (Emphasis added.)

As expressed in the preamble to the amendment to 10 CFR 211.67(d)(2), 41 FR 13899 (April 1, 1976), the purpose of this provision for adjusting entitlements is to ensure that the benefits of cost equalization under the entitlements program relating to price-controlled domestic crude oil are not granted to a refiner for crude oil runs to stills attributable to the sale of products made into the world market at uncontrolled prices and that these benefits are retained within the domestic economy. See *Mobil Oil Corp.*, Interpretation, 1977-16, 42 FR 31151 (May 28, 1977).

The sole basis for Chevron's argument that it does not need to make adjustments for entitlements in connection with its aforementioned sales of Bunker C fuel oil in the Canal Zone is its claim that § 3(7) of the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended, Pub. L. No. 93-159,² compels the Department of Energy (DOE) to treat all ports in the Canal Zone as "United States" ports. Section 3(7) of the EPAA provides in relevant part as follows:

The term "United States" when used in the geographic sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

According to Chevron, the domestic character of the Panama Canal Zone is so firmly established in Federal law that in regulations implementing the EPAA the DOE must treat the Canal Zone as an integral part of the "United States" for all purposes, including the entitlements program, absent an explicit statutory exclusion of the Canal Zone from the "United States."

Notwithstanding Chevron's arguments, the Canal Zone has no inherent domestic character under Federal law, and the EPAA neither refers to the Canal Zone nor establishes its status as part of the "United States." This conclusion is consistent with case law in which Canal Zone ports have been treated as foreign ports under civil statutes similar in application to the EPAA. See, e.g., *Luckenbach S. S. Co. v. United States*, 280 U. S. 173 (1930); *Ares v. S.S. Colom*, 269 F. Supp. 763 (D.C.Z. 1967). The cases and statutes cited by Chevron do not support its requested interpretation and involve the extension of United States criminal law to the Canal Zone³ and other laws entirely unrelated to the EPAA.⁴ None

¹ 15 U.S.C. 751 et seq. (1976).

² *Gov't of the Canal Zone v. Griffith*, 459 F. 2d 1036 (5th Cir. 1972); *Gov't of the Canal Zone v. Scott*, 502 F. 2d 566 (5th Cir. 1974).

³ Chevron cites *Dixon v. United States*, 381 U.S. 68 (1965), and *Manhattan General Equipment Co. v. Comm'r of Internal Revenue*, 297 U.S. 129 (1936), to support the proposition that an administrative regulation or decision in conflict with the governing statute is invalid. Since we conclude that 10 CFR 210.21 and 211.67(d)(2) do not conflict with the EPAA in any respect, this proposition is irrelevant.

of these authorities holds that the Canal Zone is a domestic entity under the EPAA or that there exists a principle of Federal law requiring the inclusion of the Canal Zone within the "United States" for purposes of administrative regulations implementing a statute unless it expressly excludes the Canal zone from the "United States."⁵

In its request Chevron admits that it has found nothing in the legislative history of the EPAA to support its claims that the Canal Zone must be included in "United States" as defined in § 3(7) of the EPAA and must be included in "United States" for all regulations implementing the EPAA. Although the Conference Committee report on the EPAA expressly adverts to the intention to include Guam and the Virgin Islands within the statutory definition of "United States," it conspicuously omits any reference to the Canal Zone:

The inclusion of the definition of the term "United States" is designed to make clear that the allocation program called for under this legislation is to reach beyond the States and the District of Columbia to the Commonwealth of Puerto Rico and the territories and possessions of the United States. The conference committee is aware that important refinery facilities are located in Guam and the Virgin Islands. It is expressly intended that allocations of covered fuels be made both to and from these refineries as may be required to carry out the purposes of this legislation. (Emphasis added.) Conf. Rep. 93-628, 93d Cong., 1st Sess. (1973) reprinted in [1974] U.S. CODE CONG. & AD. NEWS 2688, 2693-2694.

It appears from this statement that Congress intended the EPAA to benefit domestic and otherwise specifically named entities in order to maximize benefits to the domestic economy under the petroleum price and allocation regulations.⁶

Chevron relies on *dicta* in *United States v. Husband R. (Roach)*, 453 F.2d 1054 (5th Cir. 1971), and *Feres v. United States*, 340 U.S. 135 (1950), suggesting that the Panama Canal Zone is a "territory" of the United States. *Roach* only held, however, that the Governor of the Zone, acting as the President's delegate, has authority to implement an express statutory mandate to regulate the use of highways and vehicular traffic in the Zone. *Feres* decided that the protections of the Federal Tort Claims Act did not extend to members of the armed forces; the legal status of the Panama Canal Zone was of absolutely no significance in the case. Chevron also cites a number of Federal statutes expressly including the Panama Canal Zone within or expressly excluding the Canal Zone from the United States but does not demonstrate the relevance of any of these statutes to the interpretive question presented here under the EPAA and DOE regulations.

⁵ Chevron also claims that the Isthmian Canal Convention of 1903 (33 Stat. 2234) supports its requested interpretation. By that treaty the Republic of Panama granted to the United States the "rights, power and authority" within the Canal Zone "which the United States would possess and exercise if it were the sovereign of the territory. . . ." Convention, Art. III (33 Stat at 2235) (Emphasis added.) The Convention did not require the United States fully to exercise such rights to their international legal limits under Federal law.

⁶ CLC Phase III Ruling 1973-3, June 28, 1973, IRS Stabilization Program Guidelines III, § 31.207.15. See also CLC Phase IV Price Ruling 1974-3, 39 FR 10152 (March 18, 1974).

¹ 10 CFR 212.53 provides as follows: (a) The prices charged for export sales, including sales to a domestic purchaser which certifies the product is for export, are exempt.

Absent an express statutory mandate as to the status of the Canal Zone, the Federal Energy Administration, a predecessor agency of the DOE, properly exercised its discretion in promulgating the definition of the term "United States" in 10 CFR 210.21, quoted above, which expressly excludes the Panama Canal Zone from the "United States." Chevron contends that § 210.21 conflicts with § 3(7) of the EPAA and is therefore invalid. Inasmuch as the governing statute is silent as to the status of the Canal Zone, no such conflict exists. Under § 210.21 neither the Panama Canal Zone nor any of its ports is part of the "United States" for purposes of the Mandatory Petroleum Allocation and Price Regulations, 10 CFR Parts 211 and 212.

Accordingly, for the reasons set forth above, we have determined that the term "United States port" in 10 CFR § 211.67(d)(2) does not include the port of Balboa, Panama Canal Zone, and Chevron must reduce its volume of crude oil runs to stills as required under that regulation for the export sales of Bunker C fuel oil sold to various buyers for use as a marine fuel on voyages departing from Balboa.

Issued in Washington, D.C. on June 2, 1980.

Merrill F. Hathaway, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980-11

To: Standard Oil Company (Indiana).
Regulations Interpreted: 10 CFR 211.9; 211.10; 211.12; 211.17; 211.105(f).

Code: GCW-AI—Allocation Entitlement;
Base Period Volume; State Set-Aside Program

Facts

The Amoco Oil Company (Amoco), a wholly owned subsidiary of the Standard Oil Company (Indiana), is an integrated petroleum company that refines crude oil into motor gasoline, a product subject to the provisions of the Mandatory Petroleum Allocation Regulations set forth in 10 CFR Part 211. Amoco is a "prime supplier" of motor gasoline for the State of Ohio, and is subject to 10 CFR 211.17 which provides for the establishment of a state set-aside system for motor gasoline and certain other petroleum products.

On July 15, 1979, the Department of Energy (DOE) issued a final rule establishing the period of November 1977 through October 1978 as the base period year for the allocation of motor gasoline. 10 CFR 211.102; 44 FR 42549 (July 19, 1979). During certain months of this base period Ohio, among other states, decided that it would not approve hardship and emergency applications for assignment of state set-aside products, including motor gasoline, for the entire amount of available state set-aside volumes of these products. Ohio then "released" certain quantities of state set-aside products

back to prime suppliers for distribution, directing prime suppliers in writing during certain months to "release from the Ohio State Set-Aside . . . through your normal distribution channels" certain volumes of state set-aside products for that particular month. In this way the State of Ohio "released" motor gasoline to Amoco for distribution by Amoco. Amoco then sold this motor gasoline to several customers who are "wholesale purchaser-resellers" of Amoco motor gasoline, as that term is defined in 10 CFR 211.51. Par Mar Oil Company (Par Mar) is among those wholesale purchaser-resellers that during the base period purchased from Amoco motor gasoline which had been released by Ohio from the state set-aside system.

In its request for interpretation Standard Oil Company (Indiana) seeks a determination that the volume of state set-aside motor gasoline released by Ohio to Amoco and then sold by Amoco to Par Mar and other wholesale purchaser-resellers during the base period year may not be counted by these firms as base period volumes for purposes of establishing their entitlement to an allocation of motor gasoline.

Issue

Does § 211.105(f) of the Mandatory Petroleum Allocation Regulations, which provides that volumes of motor gasoline purchased and sold during the base period year pursuant to orders issued under the state set-aside program will not create mandatory supplier-purchaser relationships under § 211.9, apply to volumes ordered released by a State from a prime supplier's set-aside volume in accordance with § 211.17(h) (1) and (3)?

Interpretation

For the reasons set forth below, the Department of Energy (DOE) concludes that under the Mandatory Petroleum Allocation Regulations motor gasoline ordered released by Ohio from Amoco's state set-aside volumes and sold by Amoco during the base period year to Par Mar and other wholesale purchaser-resellers of motor gasoline is to be included in these purchasers' base period volumes for purposes of determining their entitlement to an allocation of this product.

Under 10 CFR 211.9(a) each supplier of an allocated product must supply all wholesale purchasers that "purchased or obtained" that allocated product from that supplier during the base period as specified in 10 CFR Part 211, Subparts D through K. Rules governing the allocation of motor gasoline are contained in 10 CFR Part 211, Subpart F.

The volumes of an allocated product that wholesale purchaser-resellers are entitled to receive from suppliers in a particular month are specified in § 211.12(b)(1), which provides:

A wholesale purchaser-reseller . . . shall be entitled to receive a volume of an allocated product equal to the sum of the volumes allocable to it from each of its suppliers. The volume supplied to a wholesale purchaser-reseller by each of its suppliers shall equal the sum of (i) any amounts which that purchaser has certified to a supplier to be for ultimate use under an

allocation level not subject to an allocation fraction plus (ii) the product of that supplier's allocation fraction multiplied by an amount equal to that part of that wholesale purchaser's base period use purchased or obtained from that supplier minus any amounts which that purchaser has certified to be for ultimate use under an allocation level not subject to an allocation fraction. (Emphasis added.)

Accordingly, under §§ 211.9 and 211.12(b)(1), mandatory supplier-purchaser relationships result from all sales of motor gasoline during the base period by a supplier to wholesale purchasers-resellers of motor gasoline and the volumes of motor gasoline to which such wholesale purchaser-resellers are entitled are a function of these purchasers' base period use.²

"Base period use" is defined in § 211.10(b)(2)(ii), which provides in relevant part:

Base period use means base period volume or adjusted base period volume, as appropriate. A wholesale purchaser's base period volume of a particular allocated product is the volume of that allocated product purchased or obtained during the appropriate base period.

For motor gasoline the appropriate base period is set forth in § 211.102, which defines "base period" as "the month of the period November 1977 through October 1978 corresponding to the current month." Therefore, under the general rule, a supplier of motor gasoline must supply all wholesale purchaser-resellers entitled to allocations of motor gasoline that purchased this product from the supplier during the period of November 1977 through October 1978.

The regulations contain, however, one relevant exception to this general rule, which was promulgated concurrently and as part of the rule updating the base period for motor gasoline. 44 FR 42549 *supra*. Section 211.105(f) states in relevant part:

Volumes purchased and sold during the base period year pursuant to orders issued under the State set-aside program will not create mandatory supplier-purchaser relationships under section 211.9.

The rules governing the state set-aside program are set forth in § 211.17. This section provides in relevant part:

(a) A state set-aside system shall be established for . . . motor gasoline. . . . The state set-aside shall be utilized by a State office to meet hardship and emergency requirements of all wholesale purchaser-

¹ The term "prime supplier" is defined in § 211.51 as follows:

"Prime supplier" means the supplier, or producer as defined in Subpart D, which makes the first sale of any allocated product subject to the state set-aside into the state distribution system for consumption within the state.

² A purchaser's entitlement to an allocation level of motor gasoline under § 211.12 is determined by reference to § 211.103. As stated in § 211.12(b)(1), a wholesale purchaser-reseller's entitlement to an allocation of motor gasoline from a base period supplier depends on its base period use, its supplier's allocation fraction, and the volume of motor gasoline which the wholesale purchaser-reseller certifies to its supplier to be for ultimate use under an allocation level not subject to an allocation fraction. Section 211.103 sets forth allocation levels for ultimate uses of motor gasoline by end-users who are bulk purchasers and by wholesale purchaser-consumers. These purchasers may be entitled to purchase motor gasoline under an allocation level not subject to an allocation fraction for certain priority uses as provided under § 211.103(b).

consumers and end-users within that state from the state set-aside volumes. . . . To facilitate relief of the hardship and emergency requirements of wholesale purchaser-consumers and end-users, the State office may direct that a wholesale purchaser-reseller be supplied from the state set-aside in order that the wholesale purchaser-reseller can supply the wholesale purchaser-consumers and end-users experiencing the hardship or emergency.

Under the state set-aside program each State has available each month a percentage of the aggregate volumes of each product subject to state set-asides which prime suppliers estimate they will sell into the state during that particular month for consumption within the state. 10 CFR 211.17(b)(3). The mechanics of how wholesale purchaser-consumers and end-users shall obtain hardship or emergency relief from the state set-aside program are described in § 211.17 (d), (e) and (f), as follows:

(d) *State action.* (1) All hardship and emergency applications for assignment from the State set-aside system and appeals thereof shall be filed with and resolved by the appropriate State Office in accordance with Subpart Q of Part 205 of this chapter.

(2) If a State Office approves a hardship or emergency application, it shall assign a prime supplier and amount from the state set-aside to the applicant. . . .

(e) *Authorizing document.* The State Office shall issue to an applicant granted an assignment a document authorizing such assignment. A copy of the authorizing document (or a summary) shall also be provided by the State Office to the designated State representative of the prime supplier assigned to the applicant. An authorizing document issued by the State Office pursuant to this section is effective upon issuance and represents a call on the prime supplier's set-aside volumes for the month of issuance. . . .

(f) *Supplier's responsibilities.* Suppliers shall provide the assigned amount of an allocated product to an applicant when presented with an authorizing document. The authorizing document shall entitle the applicant to receive product from any convenient local distributor of the prime supplier from which the state set-aside assignment has been made. Wholesale purchaser-resellers of prime suppliers shall, as non-prime suppliers, honor such authorizing documents upon presentation. . . .

Accordingly, wholesale purchaser-consumers and end-users may apply to their State Office for hardship or emergency relief. If the State approves the application and issues the authorizing document, the wholesale purchaser-consumer or end-user may then purchase the allocated product from the designated prime supplier or from a convenient distributor of the prime supplier's product.

As the language of § 211.105(f) indicates, volumes of motor gasoline "purchased and

sold during the base period year pursuant to orders issued under the State set-aside program will not create mandatory supplier-purchaser relationships under § 211.9." If an applicant for hardship or emergency relief applied for an assignment of volumes of motor gasoline from the state set-aside system and the application was approved by a State by issuance of an authorizing document, the applicant's purchase of the assigned state set-aside volumes during the base period would not give rise under § 211.105(f) to a mandatory supplier-purchaser relationship. The motor gasoline purchased under these circumstances would not constitute part of the purchaser's base period volume because these volumes were "purchased and sold" pursuant to an order issued under the state set-aside program. An authorizing document issued by a State pursuant to § 211.17(e) granting an assignment of motor gasoline to an applicant for hardship or emergency relief from state set-aside volumes at once entitles a wholesale purchaser-consumer or end-user to purchase this product and directs the supplier to sell this product to that purchaser. Such an order requires a supplier to offer to sell a specified volume of product to a particular purchaser and authorizes the purchaser to buy that volume from the supplier or his distributor.

The same is not true, however, of motor gasoline released by a State from state set-aside volumes under § 211.17(h). Section 211.17(h) provides in relevant part, as follows:

Release of State set-aside. (1) At any time during the month, the State office may order the release of part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the State.

(3) Orders issued pursuant to this paragraph shall be in writing and effective immediately upon presentation to the prime supplier's designated State representative. Such orders shall represent a call on the prime supplier's set-aside volumes for the month of issuance. . . .

Unlike an assignment order issued under a state set-aside program, an order issued by a State to a prime supplier under § 211.17(h)(1) releasing all or part of the prime supplier's set-aside volume "through the prime supplier's normal distribution system in the State," is not an order granting any particular purchaser a right to purchase these volumes. Any purchase by a wholesale purchaser or end-user of "released" product results from the prime supplier's normal distribution system in the State, which is subject to and governed by the Mandatory Petroleum Allocation Regulations. See generally 10 CFR 211.10. Thus, while an order issued by a State under § 211.17(h)(1) releasing motor gasoline from a prime supplier's set-aside volume allows the prime supplier to sell the product, such an order does not entitle any particular firm to purchase these volumes. Therefore, volumes of motor gasoline released by Ohio from the Ohio state set-aside program under § 211.17(h)(1) and purchased by a wholesale purchaser-reseller cannot be described as "purchased and sold" pursuant to an order issued under the state set-aside program for

purposes of § 211.105(f). These purchases do not come within the § 211.105(f) exception from the general rule that all sales of motor gasoline during the base period year create mandatory supplier-purchaser relationships. Therefore, motor gasoline that is released back to a prime supplier in accordance with § 211.17(h)(1) for sale "through the prime supplier's normal distribution system in the State" and that is supplied to a purchaser forms part of the purchaser's base period volume of that product and is not exempt in any manner from the allocation requirements of Part 211.

The general purpose of the July 15, 1979 rule updating the base period for motor gasoline to November 1977 through October 1978 and promulgating § 211.105(f) supports this result.⁶ The updated base period was intended to guarantee an equitable distribution of motor gasoline by reflecting use of motor gasoline during a recent period of relatively normal market conditions and by preventing disruptions which would occur if an allocation system based on distribution patterns that existed in 1972 (the earlier base period) were used in a shortage situation. See Section 4(b)(1)(F) of the Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. No. 93-159 (November 27, 1973) * Preamble to Final Rule, 44 FR 42549, 42551 (July 19, 1979); Preamble to Interim Final Rule, 44 FR 26712 (May 4, 1979). By updating the base period DOE intended to base future allocations of motor gasoline on a recent period which reflected consumption patterns under relatively adequate supply conditions, thereby representing more accurately the current real needs of purchasers of motor gasoline. To give effect to the purpose of the rule updating the base period, all of the purchases that wholesale purchaser-resellers made during the base period should generally be included in these purchasers' base period volumes. Any exceptions to this general rule, such as the exception provided under § 211.105(f), must be strictly construed in order to prevent a disruption in the supply of motor gasoline to purchasers that bought and resold or consumed it in the ordinary course of their business.

The preamble to the rule updating the base period for motor gasoline, *supra*, confirms this conclusion, stating:

The updating of the base period creates mandatory supplier-purchaser relationships for all actual sales which occurred during the

⁶ On February 22, 1979, DOE's Economic Regulatory Administration (ERA) activated certain portions of the Standby Petroleum Product Allocation Regulations, 44 FR 3928 (January 18, 1979), in order to update the base period for motor gasoline allocation from the corresponding month of 1972 to the corresponding month of the period July 1, 1977, to June 30, 1978, and implemented the updated base period for an initial period of March, April and May 1979. 44 FR 11202 (February 28, 1979). Subsequently, on May 1, 1979, the ERA issued an interim final rule (Interim Rule) which superseded the July 1, 1977 to June 30, 1978 base period. 44 FR 26712 (May 4, 1979). Under the Interim Rule, the base period for motor gasoline allocation is designated as the period November 1977 through October 1978. The updated base period was then permanently established by the final July 15, 1979 rule.

¹⁵ U.S.C. 751 *et seq.* (1976).

base period. . . . Thus, sales of "surplus" product under 10 CFR 211.10(g) or sales made by "substitute" suppliers under 10 CFR 211.25(a) are not excepted. In the new § 211.105(f) we have made *one explicit exception relating to transactions under the state set-aside program. Volumes purchased and sold during the base period year pursuant to orders issued under the state set-aside program took place to meet emergency requirements at that time. It is not appropriate that such transactions be the basis for permanent rights and obligations.* (Emphasis added), 44 FR 42552.

As evidenced by this language, § 211.105(f) was intended to apply exclusively to orders which were issued under the state set-aside program to meet emergency requirements, i.e., to assignment orders issued by States to suppliers to supply specified volumes of motor gasoline to particular purchasers in order to meet temporary hardship or emergency requirements. This language indicates that § 211.105(f) was not intended to apply to the sale during the base period of motor gasoline ordered released by States from state set-aside volumes since such sales during the base period year did not take place to meet emergency requirements at that time. Motor gasoline released from state set-aside volumes back to a prime supplier in accordance with § 211.17(h)(1) and sold by a prime supplier to a wholesale purchaser-reseller during the base period was therefore intended to be part of the mandatory supplier-purchaser relationship and to be included in the purchaser's base period volume under §§ 211.10, 211.12, and 211.103.

We therefore conclude that volumes of motor gasoline sold by Amoco to Par Mar during the November 1977 through October 1978 base period pursuant to releases by the State of Ohio of state set-aside volumes of that product under § 211.17(h)(1) should be included by Amoco in Par Mar's base period volumes for purposes of determining that wholesale purchaser-reseller's entitlement to an allocation of motor gasoline.

Issued in Washington, D.C., on June 11, 1980.

Merrill F. Hathaway, Jr.,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980-12

To: Cities Service Company
Regulation Interpreted: 10 CFR 212.82; 212.83
Code: GCW—PI—Landed Costs; Part 212, Subpart E; Product Cost Increases

Facts

The Cities Service Company is a major, integrated petroleum company. As a result of its business activities, Cities Service is a "refiner" as that term is defined in 10 CFR 212.31 and is therefore subject to the provisions of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart E.

Cities Service proposes to construct an unloading facility near Hackberry, Louisiana, for imported propane and mixed butanes delivered by liquefied petroleum gas tankers. The proposed facility would be operated by a wholly-owned subsidiary of Cities Service, Import Facility Corporation (IFC), and would enable Cities Service to import foreign

liquefied petroleum gas products and provide unloading services. IFC would charge a fee (on a per-gallon basis) competitive with other import unloading facilities to users of the facility. The same fee would be charged to all users of the facility, whether or not the firm was affiliated with Cities Service. Cities Service expects that an existing subsidiary, International Corporation, will purchase natural gas liquids products in various foreign markets from non-affiliated entities at current prices and transport them by tanker to the proposed Louisiana facility, where they would be unloaded by IFC. After the products are unloaded, International Corporation will transfer them to the NGL Division, Chemicals Group, of Cities Service. The NGL Division will then distribute the products to its customers through its normal distribution system. Cities Service has indicated that a similar situation exists with respect to unloading service fees at its Clifton Ridge terminal for the handling of crude oil. Cities Service Pipe Line Company, a wholly-owned subsidiary, charges all users, including Cities Service, a terminaling service fee for all crude petroleum handled. This fee is included by Cities Service in the landed cost of the crude oil and is a customary accounting procedure, generally accepted and consistently and historically applied by Cities Service.

Issue

May Cities Service treat those fees charged by IFC, a Cities Service subsidiary, for unloading imported liquefied petroleum gas products as part of the "cost of products purchased" pursuant to 10 CFR 212.82 and 212.83?

Interpretation

For purposes of the Mandatory Petroleum Price Regulations, unloading fees charged by IFC, a Cities Service subsidiary, for unloading imported liquefied petroleum gas products, may be treated as part of the cost of products purchased pursuant to 10 CFR 212.82 and 212.83, provided that the increases in such fees do not exceed those being charged for comparable services by entities that are not part of Cities Service's firm.

The Mandatory Petroleum Price Regulations applicable to refiners, 10 CFR Part 212, Subpart E, allow a refiner to pass through the "increased costs of products purchased." 10 CFR 212.82, 212.83 ("B" factor). The cost of a purchased product for the purposes of imported covered products other than crude oil is the "landed cost." The "landed cost" of covered products depends on the facts presented and the definition of "landed cost" in § 212.82. In the fact pattern presented by Cities Service, an affiliated entity (International Corporation) would purchase natural gas liquids products in foreign markets and transport them to the United States where they would be unloaded by IFC, an affiliated entity. Thus, reference must be made to the fourth paragraph of the definition of "landed cost" in § 212.82:

(4) For purposes of covered products other than crude oil purchased and shipped pursuant to a transaction between affiliated entities, the costs of the product and the transportation both computed by use of the

customary accounting procedures generally accepted and consistently and historically applied by the firm concerned, plus import fees and duties incurred (Emphasis added.)

Under the facts presented, once the natural gas liquids products are unloaded by IFC, International Corporation will transfer the products to the NGL Division of Cities Service. The NGL Division will then distribute these products to its customers through its normal distribution system. In an analogous situation, the Department of Energy (DOE) determined that the cost of transporting propane through pipeline facilities to bulk storage terminals may be included as a cost of "product in inventory" under § 212.92. See *Pyrofax Gas Corp.*, Interpretation 1977-4, 42 FR 10967 (February 25, 1977). In reaching this conclusion, the Federal Energy Administration (FEA), a predecessor agency of the DOE, analyzed the provisions of amended § 212.92, its preamble, Ruling 1975-1, 40 FR 6768 (February 14, 1975), Ruling 1975-9, 40 FR 40826 (September 4, 1975) and Ruling 1975-10, 40 FR 40826 (September 4, 1975) 40 FR 51414 (November 5, 1975).

The preamble to amended § 212.92 stated that the amendments did not alter the conclusions in these Rulings. 41 FR 19110, 19113 (May 10, 1976). Ruling 1975-1 stated that increased transportation costs associated with bringing a covered product into inventory are increased product costs pursuant to § 212.92. Ruling 1975-9 described as follows the point at which a product is brought into a reseller's inventory:

"[Transportation] costs may be included as part of the weighted average cost of product in inventory to the extent that they are incurred in bringing the product into storage at a location that constitutes a part of the buying firm's storage and distribution system. In other words, the costs associated with movement of the product through a distribution system that is used in common to distribute product to various firms operating at the same level of distribution as the buying firm may generally be treated as part of the cost of the product to the buying firm."

Ruling 1975-10 states:

Pursuant to Ruling 1975-1, increased transportation costs associated with bringing a covered product into inventory are considered to be "increased costs" pursuant to § 212.92. Although Ruling 1975-1 did not deal with an example of a firm that furnished its own transportation instead of using an independent carrier, the rationale for treating the increased costs associated with bringing the product into inventory is the same in both instances, and a firm should not be disadvantaged under the FEA price regulations because it chose to use its own facilities rather than an independent carrier. Accordingly, Firm X may treat its actual increased transportation costs associated with transporting the covered product from Refiner W into its inventory as "increased costs." However, the amount of such increased transportation costs must be established by the firm concerned and may not, in any event, exceed increases in the amount being charged for comparable services by independent carriers (e.g., increases in published I.C.C. tariffs since May

15, 1973). The firm concerned has the burden of establishing not only that it has actually incurred those increased costs, but also that the increased costs it computes as attributable to the cost of transportation do not exceed such third-party rate increases for comparable services.

The same rationale applies to the issue presented here. The fees paid by International Corporation (a reseller subsidiary of Cities Service) to the operator of the proposed facility (IPC) to unload foreign liquefied gas products may be considered transportation costs. Cities Service should not be disadvantaged because it takes the initiative to provide part of the transportation of the products concerned into its inventory through the IPC subsidiary. These transportation costs may then be included in Cities Service's landed cost under § 212.82, and increases in such costs may be reflected in the firm's "increased costs of purchased products." Since International Corporation and IPC are all part of the same "firm," as defined in § 212.82, however, increases in such transportation costs charged by affiliated entities are limited by increases in comparable fees charged by other firms.

Issued in Washington, D.C. on June 12, 1980.

Merrill F. Hathaway, Jr.,
Acting Assistant General Counsel for
Interpretations and Rulings.

Appendix B.—Responses to Petitions for Reconsideration

Petitioner	Interpretation	Date of response
Ashland Oil, Inc., Clark Oil & Refining Corp., Energy Cooperative, Inc.	Consumers Power Company, 1979-26, 45 FR 5663 (January 24, 1980).	May 27.
Amoco Oil Company	Consumers Power Company, 1979-26, 45 FR 5663 (January 24, 1980).	May 27.

Petition for Reconsideration

Interpretation: Consumers Power Company.

Petitioners: Ashland Oil, Inc., Clark Oil & Refining Corp. Energy Cooperative, Inc.
Date: May 27, 1980.

This responds to your petition submitted on behalf of Ashland Oil, Inc., Clark Oil & Refining Corp., and Energy Cooperative, Inc., as supplemented by our letter of May 5, 1980, seeking reconsideration of *Consumers Power Company*, Interpretation 1979-26, 45 FR 5663 (January 24, 1980). For the reasons discussed below, we have concluded that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In such cases, the burden is on the petitioner to demonstrate that the Interpretation was erroneous in fact or in law, or that the result reached in the Interpretation was arbitrary or capricious. 10 CFR 205.85(f).

Interpretation 1979-26 concluded that Consumers Power Company (Consumers) owns and operates a feedstock preparation unit that processes crude oil and manufactures refined petroleum products. Thus, Consumers qualifies as a refiner pursuant to the definitions set forth in 10 CFR 211.51 and 211.62. As a refiner, Consumers is eligible for participation in the entitlements program, 10 CFR 211.67, and Consumers may include the volumes of lease condensate and Canadian plant condensate in its volume of crude oil runs to stills in accordance with § 211.67(d)(3), effective June 17, 1976, the date Consumers requested inclusion in the entitlements program.

Your petition raises a number of arguments to support your view that Interpretation 1979-26 is erroneous. We have given careful consideration to each argument presented. You contend that the Interpretation is contrary to the basic purposes of the Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. No. 93-159 (November 27, 1973)¹ by allowing the inclusion of a type of facility, a synthetic natural gas (SNG) plant, that cannot be considered a refinery, and has the effect of allegedly encouraging the allocation of scarce petroleum resources to the manufacture of SNG. Interpretation 1979-26 is based, however, upon the determination that under the applicable DOE regulations the Marysville feedstock preparation unit is a crude oil refinery. The arguments you raise do not alter the fact that the firm owns and operates a refinery and therefore has a right to receive the benefits of the entitlements program.

Equally without merit are your contentions that Interpretation 1979-26 is procedurally deficient. You argue, *inter alia*, that the Interpretation was issued without notice and comment and failed to make the necessary determination that the process at Consumers' feedstock preparation unit constitutes "crude oil runs to stills" under 10 CFR 211.67. As Interpretation 1979-26 merely clarified existing DOE regulations, notice and comment was not required before its issuance. Based on the uncontroverted facts presented, Interpretation 1979-26 properly determined that the Marysville feedstock preparation unit distills crude oil. There is no legal authority or factual basis to assert that the regulatory term "crude oil runs to stills" requires the use of a specific type of distillation equipment not used by Consumers.

Inasmuch as you have failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of the petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

Petition for Reconsideration

Interpretation: Consumer Power Company
Petitioner: Amoco Oil Company
Date: May 27, 1980

This responds to your petition submitted on behalf of Amoco Oil Company, seeking

reconsideration of *Consumer Power Company*, Interpretation 1979-26, 45 FR 5663 (January 24, 1980). For the reasons discussed below, we have concluded that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In such cases, the burden is on the petitioner to demonstrate that the Interpretation was erroneous in fact or in law, or that the result reached in the Interpretation was arbitrary or capricious. 10 CFR 205.85(f).

Interpretation 1979-26 concluded that Consumers Power Company (Consumers) owns and operates a feedstock preparation unit that processes crude oil and manufactures refined petroleum products. Thus, Consumers qualifies as a refiner pursuant to the definitions set forth in 10 CFR 211.51 and 211.62. As a refiner Consumers is eligible for participation in the entitlements program, 10 CFR 211.67, and Consumers may include the volumes of lease condensate and Canadian plant condensate in its volume of crude oil runs to stills in accordance with § 211.67(d)(3), effective June 17, 1976, the date Consumers requested inclusion in the entitlements program.

Your petition raises a number of arguments to support your view that Interpretation 1979-26 is erroneous. We have given careful consideration to each argument presented. You contend that Consumers is a public utility, not a refiner. The arguments you raise do not alter the fact that the firm owns and operates a refinery and therefore has a right to receive the benefits of the entitlements program.

We also disagree with your contention that Interpretation 1979-26 addressed a moot issue, because the implementation of the legal determinations may require refiners to purchase entitlements from Consumers.

Inasmuch as Amoco has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of the petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

Appendix C.—Cases Dismissed

File No.	Requester	Category	Date dismissed
A-535.	Chevron U.S.A., Inc.	Allocation	May 15.
A-525.	Tesoro Petroleum Company	Allocation	May 15.
A-487.	Mitchell Energy Corporation	Price	May 15.
A-470.	Charles Hohl & Sons, Inc.	Allocation	May 29.
A-329.	Crude Oil Purchasing, Inc.	Price	June 2.
A-534.	T.E. Bird	Price and allocation	June 2.
A-531.	Osceola Refining Company	Allocation	June 3.

[FR Doc. 80-19043 Filed 6-23-80; 8:45 am]

BILLING CODE 6450-01-M

¹ 15 U.S.C. 751 et seq. (1976).

CIVIL AERONAUTICS BOARD**14 CFR Part 399**

[Policy Statements Amdt. No. 72 to Part 399; Docket No. 34683; PS-95]

Statements of General Policy

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Board is issuing a final rule which amends our interim suspension policy on standard industry fare levels for intrastate pairs of points in California, Texas, and Florida. We are accelerating the formula under which the Standard Industry Fare Level for use in constructing the intrastate fare ceilings was to be gradually adjusted to bring them to the level of the interstate standard industry fare level for those markets. Effective immediately, the ceiling fares for each intrastate market shall be determined according to the PS-94 ceiling formula.

DATES: Adopted: June 17, 1980. Effective: June 17, 1980.

FOR FURTHER INFORMATION CONTACT:

Laurie Schaffer, Trial Attorney, Bureau of Domestic Aviation, (202) 673-5009, or Mark Kahan, Assistant Director, Fares, Rates, and Tariffs, Bureau of Domestic Aviation, (202) 673-5371, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION:**I. Background**

The Airline Deregulation Act of 1978 provided for the preemption of the authority of the individual states to regulate the fares charged and the miles flown within the states by airlines authorized by the Board to engage in interstate air transportation.¹ As a result, jurisdiction vested in the Board over all authority of any air carrier authorized by the Board to engage in interstate air transportation, including its operations in intrastate markets.

At the time of the passage of the Act, there was a marked difference between the interstate fare policies promulgated by us in the *Domestic Passenger-Fare Rulemaking*, PS-80, 43 FR 39522, September 5, 1978, and the fare policies adopted by the individual states to govern air transportation within their jurisdiction. In general, the states adopted policies which kept the intrastate fares at an artificially low level. The fares in many intrastate markets were frequently 50 percent below the interstate fare for the same

distances at the time PS-82, 44 FR 9940, February 15, 1979 was adopted. In order to avoid a collision between the two systems and prevent abrupt changes in the interstate fare systems which would involve enormous increases in air fares, we decided to standardize the levels by bringing intrastate fare ceilings in line with the level of the interstate ceiling through a gradual formula. Specifically, we adopted as the standard industry fare level between intrastate pairs of points, predominantly the fare charged on July 1, 1977, updated according to section 1002(d)(6) of the Federal Aviation Act plus an additional 10 percent.² In addition, the fare ceilings would be increased by eight percent beginning July 1, 1979, and every six months thereafter until either they reached the ceilings determined by our policies for the interstate markets or until January 1, 1981, at which time they would be set at the interstate level.

PS-82 was intended as an interim rule and was accompanied by a request for comments (PSDR-55, 44 FR 9933, February 15, 1979). Comments were received from Eastern Airlines, the State of California and the California Public Utilities Commission and Pacific Southwest Airlines.

In addition to these comments, the Board received on November 21, 1979, an application from United Airlines for a waiver to allow United to increase its intrastate California fares by 25 percent.³ To justify its application, United referred to changed circumstances in the airline industry and the California markets since the effective date of PS-82. In this period of time, the carrier reported a substantial decline in profits and rapidly rising costs: in particular, a sharp increase in the price of jet fuel.

At the time United filed its application for a waiver, we also received indications from another carrier that the markets in California were experiencing service losses greater than were evident in the rest of the country, and that there was a reasonable connection between the low fares and California's service problems. Because of the changing circumstances as noted by United, and the potential impact of the Board's fare policies, a re-examination of the acceleration of the SIFL proposed in PS-82 seemed desirable.

II. Establishment of Equalized Fare Ceilings

We issued a Supplementary Notice of Requests for comments (PSDR-55B, 45 FR 2018, January 10, 1980) and received comments from Hughes Airwest, Pacific Southwest Airlines, Southwest Airlines, and United Airlines. No comments on this notice were received from any non-carrier interests. All of the comments supported an acceleration of the PS-82 timetable, although different implementation dates were suggested. Hughes Airwest and Pacific Southwest Airlines recommended that the intrastate fare levels should be allowed to rise immediately or as soon as possible to the interstate fare levels. Southwest Airlines indicated that it expected its fares would remain well below the Board's fare ceilings, so an acceleration would not directly affect them. However, the carrier argued that a rapid lifting of the ceiling was in agreement with its basic economic philosophy. United recommended that the formula be accelerated by six months with the intrastate fare ceilings reaching full equalization with the interstate fare levels on July 1, 1980.

Although the California Public Utilities Commission did not respond to the supplementary notice, they opposed the adoption of the interim rule on the basis that it exceeded the Board's authority. Specifically, they argued that the Board's determination that the standard industry fare level should be related to nationwide average costs as determined in the Domestic Passenger Fare Investigation was inconsistent with the intent of the Act.⁴ According to

¹ In addition to commenting on the Board's interpretation of "standard industry fare level" the comments also addressed two other aspects of the Board's policies which the Commission believed were contrary to the intent of the Act. The first was the method of equalizing the interstate and intrastate fare ceilings by providing for percentage increases in the intrastate ceilings above the "changes in cost" as described in § 1002(d)(7). The Commission argued that providing percentage increases above the statutory provisions was contrary to the intent of the Act. This position is clearly based on a misconception of Congressional intent and our authority to adopt zones of reasonableness that differ from those specified in the Act. The intent of the Act was to insure that we did not return to application of more restrictive policies and not to prohibit us from adopting more flexible fare policies than provided in the Act. The objective of the Act is to move toward full competition and total fare deregulation. Consequently, the Act does not prohibit us from stating the circumstances under which we believe as a matter of policy competition rather than regulation should be permitted to determine fare levels and service offerings.

The final comment of the Commission was that the failure of the Board to oversee the filing by air carriers under the Board's jurisdiction of rate increases for intrastate markets in excess of the ceiling specified in Section 1002(d)(4)(a) of the Act.

Footnotes continued on next page

¹ Section 105(a)(1) of the Federal Aviation Act, as amended by the Airline Deregulation Act of 1978, 105(a)(1).

² In general this fare would be the prime time, unrestricted, lowest commuter class fare in California and standard class in Texas and Florida.

³ Docket 31290.

C.P.U.C., the standard industry fare level should be the actual intrastate fares in effect on July 1, 1977 in those markets.

In adopting the interim rule, we concluded that while either interpretation of section 1002(d)(6)(a) was reasonable, the interpretation of the standard industry fare level as determined on the basis of the actual cost formula was a realistic reflection of the manner in which Congress understood the concept of standard industry fare level and avoids a continuing disparity in fare ceilings which could threaten service. As PS-82 explained, the application of the DPFI formula to the intrastate markets will result in the uniform application of fare policies throughout the country which is a primary objective of the Federal pre-emption provision of the Act.⁵

No comments or opposition to the supplementary notice's proposed accelerated equalization of the intrastate fare ceilings were received. The remaining issue to be addressed is the appropriate date for the implementation of this proposal. We believe that intrastate fare ceilings should be permitted to rise to interstate levels immediately. California has only 8.19 percent of the originating cities in the United States, but now accounts for over 18 percent of the total requests to withdraw service.⁶ We agree with several of the commenters that allowing the fare ceilings to rise to the equivalent interstate ceilings should create desirable incentives for carriers to maintain existing services and consider opportunities for new entry. Prior to this action, the intrastate markets have been at a disadvantage as a result of the artificially low fares which required a carrier to operate at profit levels lower than could be achieved elsewhere.

Footnotes continued from last page
or to investigate and suspend such rates, if not just and reasonable will constitute a dereliction of the Board's duty under Sections 1002(d)(1) and 1002(9). As in the other comments of the Commission, this comment was not supported by factual data indicating that a dereliction of duty had occurred or was going to occur. Therefore, it is premature and without merit. If in the future, the commission finds that a fare filed is outside the zone or unjust, they should file a complaint as specified by the Act. We will also review on our own any filing which is outside the zone to determine its reasonableness.

⁵ §105(a)(1).

⁶ A memorandum on this subject has been placed in the docket. Although not all the California points have been threatened with the complete loss of service, many have experienced some service disruptions. For example, there are 663 originating cities listed in the Board's *Report on Airlines Service, Fares, Traffic, Load Factors, and Market Shares*, August 1979, and 53 or 8.1 percent are located in California. Of these cities, 298 lost some service during the period July 1, 1978 to July 1, 1979. Twenty-eight of these cities (9.4 percent) were located in California.

Since the supplementary notice was issued, we have been very liberal in granting fare increases above the zones permitted by the interim rule. The scope of these zones above and below the standard industry fare levels is the same as in the interstate markets and, of course, with the issuance of this final rule will continue to be. We recently broadened these zones to allow carriers further fare flexibility. (PS-94; 45 FR 40969; June 17, 1980.) In markets under 200 miles, the carriers will generally have full upward and downward fare flexibility. The carriers in these markets will be able to set fares at a level determined by competition. For all markets above 200 miles, there will also be full downward flexibility and between 200-400 miles, carriers may generally set fares as much as 50 percent above the standard industry fare level. In markets above 400 miles, fares may be set 30 percent above the SIFL. By broadening the scope of these zones and the issuance of this final rule, which will bring uniformity to the fare structures throughout the 48 contiguous states, we are also moving closer to our announced goal that fares, to the maximum extent feasible, be determined by competition as opposed to regulation.

III. Final Rule

In accordance with the above determinations, the existing intrastate fare ceilings will be permitted to rise to the interstate fare ceiling, effective immediately. The SIFL for each market will be the level that it would be if the market were an interstate one whose predominant fare in effect on July 1, 1977 was the DPFI Formula Fare. Fares can be set above the SIFL as set forth in § 399.32, as amended by PS-94.

We are also deleting a sentence from § 399.37, *Joint fares*. That sentence had authorized the use of the interstate formula fares (instead of the lower intrastate fares) in constructing joint fares) that involve an intrastate flight leg. Now that the intrastate SIFL has reached the interstate level, this provision is unnecessary.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 399, *Statements of General Policy*, as follows:

1. In § 399.31, paragraph (d) is revised to read:

§ 399.31 Standard industry fare level.

(a) *Generally*. Except as set forth in paragraph (d) of this section, the standard industry fare level ("SIFL") for coach/standard service in a market is equal to the predominant fare in effect

in that market on July 1, 1977, as adjusted by the Board for cost increases.

(d) *Intrastate markets in California, Florida, and Texas*. For each of these markets, the SIFL is equal to the level that it would be if the market were an interstate one whose predominant fare on July 1, 1977, was the DPFI formula fare.

2. In § 399.37, the second sentence of paragraph (a) is deleted, so that the paragraph reads:

§ 399.37 Joint fares.

(a) *Level*. The level shall not exceed the sum of the maximum local fares permitted by this subpart minus one tax-rounded coach ceiling terminal charge for each interline connection, and in any event shall not exceed the sum of the actual local fares.

(Secs. 204, 403, 404, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 760, and 788, as amended (49 U.S.C. 1324, 1373, 1374, and 1482))

By the Civil Aeronautics Boards.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-19042 Filed 6-23-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 79C-0053]

General Specifications and General Restrictions for Provisional Color Additives for Use in Foods, Drugs, and Cosmetics; Postponement of Closing Date for Provisional Listing of Lead Acetate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of lead acetate for use as a color additive in cosmetics that color the hair on the scalp. A new closing date for lead acetate is being established to provide time for publishing a regulation in the Federal Register announcing the final decision by FDA either to approve or deny the petition for the permanent listing of lead acetate. The new closing date will be October 31, 1980.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT: Gerard L. McCowin, Bureau of Foods (HFF-334), Food and Drug

Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: The current closing date of June 30, 1980, for the provisional listing of lead acetate was established by a regulation published in the *Federal Register* of February 22, 1980 (45 FR 11799). The June 30, 1980 closing date for lead acetate was established to conform to the comment period on the agency's advance notice of proposed rulemaking concerning lead in food (44 FR 67673; November 27, 1979).

In the regulation of February 22, 1980, FDA announced its intention either to approve or deny the petition for the permanent listing of lead acetate by May 30, 1980. A final decision regarding the petition for the color additive would be based upon supporting scientific information in the petition and review and evaluation of other pertinent information including comments and scientific information submitted in response to the advance notice of proposed rulemaking request for data.

The review and evaluation of the data relevant to the use of lead acetate as a hair dye has taken longer than FDA expected. Therefore, FDA has concluded that a short extension is necessary to complete procedural requirements and publish the required *Federal Register* documents outlining the final decision by FDA regarding the petition for lead acetate for use as a color additive. Therefore, the regulation set forth below will postpone the June 30, 1980 closing date for the provisional listing of lead acetate until October 31, 1980.

Because of the shortness of time until the June 30, 1980 closing date, FDA has concluded that use of a notice and public procedure on this regulation is impracticable and that good cause exists for issuing this postponement as a final rule.

This regulation will permit the uninterrupted use of this color additive until October 31, 1980. To prevent any interruption in the provisional listing of lead acetate, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on June 24, 1980.

Therefore under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 81 is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives*, by revising the closing date for "Lead acetate" in paragraph (g) to read "October 31, 1980".

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing of additives*, by revising the closing date for "Lead acetate" in paragraph (b) to read "October 31, 1980".

Effective date. This regulation is effective June 24, 1980.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: June 16, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-18598 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 444

[Docket No. 77N-0235]

Neomycin Palmitate-Trypsin-Chymotrypsin Ointment; Final Order on Objections and Request for a Hearing Regarding Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Termination of Postponement of Effective Date.

SUMMARY: The Commissioner of Food and Drugs denies a hearing, withdraws approval of the new drug application for Biozyme Ointment, and terminates the postponement of the effective date for the revocation of certain regulations that apply to the product. The drug has been used to treat certain localized infections.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 50020) published in the *Federal Register* of July 8, 1972 (37 FR 13497), the Food and Drug Administration (FDA) announced its evaluation of a report received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group (NAS/NRC) on the combination drug Biozyme Ointment (NDA 50-020, held by Armour Pharmaceutical Co., Division Armour and Co., Greyhound Tower, Phoenix, AZ 85077) containing neomycin palmitate and trypsin-chymotrypsin concentrate. The notice

stated that the prescription drug is possibly effective for the claimed indications for treatment of localized infections or for suppressive therapy in such conditions. It also invited the submission of additional data to provide substantial evidence of the effectiveness of the drug.

In response to the July 8, 1972 notice, Armour submitted data for FDA to review. In a final rule published in the *Federal Register* of November 11, 1977 (42 FR 58739), the drug was reclassified to lacking substantial evidence of effectiveness because the studies in the original new drug application did not compare results of treatment with Biozyme to any control and the studies subsequently submitted in response to the July 8, 1972 notice did not compare treatment to a control that would show the claimed effectiveness of the enzymes alone. In addition, none of these studies showed the contribution of each of the components to the claimed effect and thus did not comply with the requirements for combination drugs. Therefore, these studies did not meet the statutory and regulatory standards for an adequate and well-controlled clinical investigation. The provisions for certification were revoked and an opportunity for a hearing was offered. Subsequently, Armour filed a hearing request and data on behalf of its product. In a notice published in the *Federal Register* of March 10, 1978 (43 FR 9801), the effective date of the November 11, 1977 final rule was postponed pending review of the data. That review is now completed.

The Commissioner of Food and Drugs has considered the arguments and data submitted and concludes that they are insubstantial and present no genuine issue of material fact requiring a hearing. A full discussion follows.

I. The Drug

Biozyme Ointment contains neomycin palmitate equivalent to 3.5 milligrams of neomycin and trypsin-chymotrypsin concentrate (10,000 Armour units of proteolytic activity) in a water-soluble base of polyethylene glycol 400 and 4,000, and stearyl alcohol.

II. Recommended Uses

Biozyme Ointment is indicated for treating abscesses and furuncles (open or incised), infected burns, pyodermas, such as folliculitis and impetigo, infected skin ulcers, such as arteriosclerotic ulcers, decubitus ulcers, diabetic ulcers, stasis ulcers, traumatic ulcers, varicose ulcers, etc.

III. Data Submitted to Support Claims of Effectiveness

In response to the November 11, 1977 notice, Armour submitted a statistical reanalysis of data from two separate sets of studies. The first set of seven studies compared Biozyme (proteolytic enzymes plus neomycin palmitate) to Armazyme (proteolytic enzymes only). The second set of five studies compared Armazyme to placebo.

The first set of seven studies comparing Biozyme to Armazyme was previously submitted to FDA in response to the July 8, 1972 notice. The deficiencies in the seven studies were summarized in the November 11, 1977 notice in which FDA announced its findings that:

The studies provide no evidence that each component of Biozyme contributes to the claimed effect and, in fact, provide considerable evidence that neomycin has no effect. It should be noted that, in the absence of a placebo group, none of these studies provide evidence of the effectiveness of the enzymes alone.

Although not previously considered in evaluating the safety and effectiveness of Biozyme, the second set of five studies comparing Armazyme to placebo had been submitted to FDA as part of a new drug application (NDA) for Armazyme. The NDA (NDA 17-665) that relied on these data was found not approvable by FDA on June 20, 1975.

Armour's statistical reanalysis consisted of pooling the data from the two separate sets of studies and analyzing the results regarding enzymatic debridement and reduction in microbiological flora after 7 to 10 days of therapy. In its analysis of the pooled data, Armour claims (see Volume 2, Tab 4, p. 211 of its submission) that a showing of " * * * a graduation of effect from control ointment (least to enzyme only ointment (greater) to enzyme-neomycin ointment (greatest)) would indicate efficacy of the combination product."

Armour's analysis also states (see Volume 2, Tab 7, p. 220-221 of its submission):

* * * each of the ingredients in Biozyme contributed to significantly greater enzymatic debridement, as evidenced by:

1. The statistically significant difference between Armazyme and placebo.
2. The greater statistically significant difference between Biozyme and placebo.
3. The statistically significant difference between Biozyme and Armazyme.
4. The statistically significant gradation in failure rates (or, conversely, response rates) from placebo to Armazyme to Biozyme.

In addition, Armour's reanalysis claims that "the statistical difference demonstrates further the contribution of

neomycin palmitate by reduction in microbiological flora, to the efficacy of Biozyme in treatment of infected skin ulcers due to various cause." (See Volume 2, Tab 7, p. 222 of its submission.)

Finally, in a summary of the reanalysis, Armour claims (see Volume 2, Tab 7, p. 222 of its submission):

These data clearly support the position that:

1. Biozyme ointment is effective in enzymatic debridement of infected ulcers of the skin and subcutaneous tissues, as demonstrated by statistically significant differences between placebo ointment, Armazyme ointment, and Biozyme ointment in well controlled double-blind studies.

2. Each of the ingredients in Biozyme ointment contributes to the efficacy of this combination drug, as evidenced by:

- a. The statistically significant difference between Armazyme and placebo in enzymatic debridement;
- b. The greater statistically significant difference between Biozyme and placebo in enzymatic debridement;
- c. The statistically significant difference between Biozyme and Armazyme in enzymatic debridement;
- d. The statistically significant gradation in failure rates (or, conversely, response rates) from placebo to Armazyme to Biozyme in enzymatic debridement; and
- e. The statistically significant difference between Biozyme and Armazyme in reduction of microbiological flora.

The Commissioner has carefully reviewed all the data and analyses submitted by Armour and finds that they are deficient to show the safety and effectiveness of Biozyme for the following reasons:

1. The two separate sets of studies comparing Biozyme to Armazyme and Armazyme to placebo, when combined and evaluated together as a single set of studies, are not adequate and well-controlled studies within the meaning of 21 CFR 314.111(a)(5) in that:

- a. They did not include a control in such a fashion to permit a quantitative evaluation of the pooled data as required in 21 CFR 314.111(a)(5)(ii)(a)(4).

- b. They did not assess the clinical importance of the reduction in microbiological flora, distinguish between normal flora and pathogens, nor correlate growth in microbiological flora with evidence of clinical deterioration. In the absence of such data, the meaningfulness of the reduction in microbiological flora is uncertain, and there is no reason to conclude that the appropriate observations were made as required in 21 CFR 314.111(a)(5)(ii)(a)(3).

2. Even if the analysis is valid to show that Biozyme is superior to Armazyme and Armazyme is superior to placebo for the claimed indications, the analysis

of the pooled data from the two separate sets of studies comparing Biozyme to Armazyme and Armazyme to placebo did not include a control in such a fashion to permit a quantitative evaluation of the data as required in 21 CFR 314.111(a)(5)(ii)(a)(4) and is not adequate to show the contribution of each component in the combination drug product, Biozyme, as required in 21 CFR 300.50.

Each of these deficiencies will be discussed in detail.

Lack of Adequate Control

In the statistical reanalysis, Armour pooled the data from the two separate sets of studies comparing Biozyme to Armazyme and Armazyme to placebo. The two separate sets of studies had several documented differences:

1. The two separate sets of studies differed in regard to the cause of ulcer (peripheral vascular disease, decubitus, or trauma), proportion of paired and unpaired multiple observations on the same individual, and proportion of patients receiving antiseptic solutions or systemic antibiotics.

2. The investigators in the studies comparing Biozyme to Armazyme were not the same as the investigators in the studies comparing Armazyme to placebo. In fact, none of the investigators in the Biozyme vs. Armazyme studies participated in the Armazyme vs. placebo studies. The investigators in the studies differed in their use of the provided scale to record observations regarding degree of debridement.

Although these differences do not in themselves negate the pooling and statistical analysis of the data from the two separate sets of studies, such pooling and analysis are valid only when there is a mechanism for interpreting the pooled data to account for these differences. This mechanism requires a nonvariable element that is common to both of the separate sets of studies. The common element serves as a benchmark against which the statistical analysis can interpret whether the observed response is due to one of the controlled variables (i.e., the drug under study) or to a difference in the study because of an uncontrolled variable (e.g., the scale to record observations). The common element cannot be one of the controlled variables. Thus, although both of the two separate sets of studies included Armazyme, this drug cannot serve as the benchmark because it contains one of the variables being studied (i.e., the proteolytic enzymes).

Armour could have correctly pooled and statistically analyzed the data from

the two separate sets of studies if the studies comparing Biozyme to Armazyme had included the placebo control used in the Armazyme vs. the placebo study. With such a common element in the studies, the statistical analysis could have determined whether observed differences were due to the controlled variable (i.e., the drug being studied) or an uncontrolled variable (e.g., different investigators).

The fallaciousness of Armour's statistical analysis of the pooled data is demonstrated by the showing that Armazyme was more effective in debridement in the study comparing Biozyme to Armazyme than in the study comparing Armazyme to placebo. In the Biozyme vs. Armazyme study, Armazyme was observed to be significantly or completely effective in debridement in 85.7 percent of the cases observed. In the Biozyme vs. placebo study, Armazyme was observed to be significantly or completely effective in debridement in 73.3 percent of the cases observed (see Volume 2, Tab 28, of its submission). If the statistical analysis of the pooled data was valid, there should have been no statistically significant difference in the observed effect of Armazyme in the two separate sets of studies. The fact, however, that the observed effect of Armazyme was statistically different in the two separate sets of studies means that the studies did not contain the common element adequate to analyze the pooled data. Thus, the Commissioner finds that the two separate sets of studies comparing Biozyme to Armazyme and Armazyme to placebo, when combined and evaluated together as a single set of studies, are not adequate and well-controlled studies within the meaning of 21 CFR 314.111(a)(5)(ii)(a)(4) because the studies failed to include a control in such a fashion to permit a quantitative evaluation of the pooled data.

Significance of Reduction of Microbiological Flora

Armour's analysis of the pooled data claims that Biozyme is superior to Armazyme in the reduction of microbiological flora as evidenced by a reduction in positive cultures and an increase in negative cultures following Biozyme therapy (see Volume 2, Tab 7, pp. 221-222, of its submission). The Commissioner noted that Armour claims that patients receiving systemic antibiotics were excluded from the evaluation of the effects of Biozyme in the reduction of microbiological flora.

Armour, however, did not attempt in its submission or analyses to show that the reduction of microbiological flora is of any importance in the treatment of

ulcers. To show the significance of the reduction of microbiological flora in the treatment of ulcers, Armour would need to show that: (1) Before treatment, clinical evidence of infection was correlated with high microbiological flora; and (2) after treatment, clinical evidence of improvement was correlated with reduced microbiological flora. Without such a showing, Armour has failed to show that Biozyme's claimed ability to reduce microbiological flora contributes to the drug product's claimed effect (i.e., the treatment of ulcers). In the absence of such a showing, the significance of the reduction of microbiological flora is uncertain, and there is no reason to conclude that appropriate observations were made as required in 21 CFR 314.111(a)(5)(ii)(a)(3).

Contribution of Each Component

The Food and Drug Administration's policy regarding combination drugs (21 CFR 300.50) requires, among other things, that each component make a contribution to the claimed effect. Thus, studies to show the safety and effectiveness of a combination drug product are required to demonstrate that each component makes a contribution to the claimed effect of the combination.

In its submission in response to the November 11, 1977 notice (see Volume 2, Tab 6, p. 215), Armour in the medical rationale for Biozyme ointment states:

The primary action of the trypsin chymotrypsin concentrate is to digest necrotic tissue, pyogenic membranes and crusts, thus cleansing open wounds or ulcers. In addition to reducing foul odors from necrotic tissues and rendering the wounds or ulcers more amenable to skilled nursing care and spontaneous healing, the enzyme concentrate also prepares subcutaneous tissues for skin grafts. The proteolytic action of the enzymes additionally serves to prepare the treated area for the maximal anti-infective action of the antibiotic component neomycin.

Neomycin palmitate is effective against most of the organisms, including both gram-negative and gram-positive bacteria, normally found in superficial skin infections, wounds, ulcers, and burns.

This medical rationale implies that the claims are different for each component of Biozyme (i.e., the proteolytic enzymes are for debridement and the neomycin is for anti-infection). In its analysis of the pooled data, however, Armour claims that each of the ingredients in Biozyme contributes to significantly greater enzymatic debridement. Thus, the Commissioner finds that it is not entirely clear whether Armour claims that neomycin contributes to the claimed effectiveness of Biozyme solely

as an anti-infective or as both an anti-infective and a debriding agent.

If the claims are different for each drug component (i.e., if the proteolytic enzymes are for debridement and the neomycin is for anti-infection), then to meet the requirements of 21 CFR 300.50 the data need to demonstrate that Biozyme is superior to neomycin alone in debridement and superior to the proteolytic enzymes alone for anti-infection.

If one of the claims is the same for both drug components and a second claim is made for one, but not both, of the drug components (i.e., if the proteolytic enzymes and neomycin both contribute to debridement and if neomycin is also an anti-infective), then to meet to requirements of 21 CFR 300.50 the data needed to demonstrate that Biozyme is superior to both neomycin and proteolytic enzymes in debridement and superior to the proteolytic enzymes in anti-infection.

In either case (i.e., whether one or two claims are made for neomycin), the studies would have to show that Biozyme is superior in debridement to neomycin alone. To make such a showing, the studies would need to include a neomycin-only control group. The studies submitted by Armour did not provide for a neomycin-only control group.

Even assuming for argument's sake that Armour's analysis is valid and Biozyme is superior in debridement to Armazyme and placebo, the data are not adequate to determine whether Biozyme's superiority in debridement is due to the proteolytic enzymes-neomycin combination or to the neomycin alone. Absent a showing that Biozyme is superior in debridement to neomycin alone, evidence is lacking that Biozyme's superiority in debridement to Armazyme and placebo is not due to neomycin alone. Such evidence is needed to refute the argument that neomycin alone would be superior in debridement to Armazyme and placebo, and to demonstrate that the enzyme makes a contribution in the presence of the neomycin.

The Commissioner finds that Armour's failure to show that Biozyme is superior in debridement to neomycin alone is a failure to show the contribution of each component to the combination drug product as required in 21 CFR 300.50.

The Commissioner also reviewed the following five articles from the medical literature which Armour included in its submission. None of the studies reported was controlled as required by 21 CFR 314.111(a)(5)(ii)(a)(4). That is, none compared a group treated with Biozyme

with a group of comparable patients who received a placebo or other control regimen. In most cases, bacteriologic data were scanty.

1. Dieter, R. A., et al., "Proteolytic Enzyme-Antibiotic Preparations in the Treatment of Stasis Ulcer," *Clinical Medicine*, pp. 20-22, July 1970. Thirty-nine patients with ulceration of the lower extremities were treated with Biozyme ointment or Biozyme powder. Twelve of them received ointment, and 27 received the powdered form. Observations included results of debridement and bacteriologic cultures. This study is uncontrolled on its face, as there is no comparison group. 21 CFR 314.111(a)(5)(ii)(a)(4).

2. Klinghoffer, M., "Treatment of an Unusual Extensive Thermal Burn," *Illinois Medical Journal*, 129:33-38, January 1966. This is a case report of a single patient in whom Biozyme ointment was used. It obviously lacks all elements of a controlled trial. 21 CFR 314.111(a)(5)(ii)(a)(2) and (4).

3. Seligman, B., "Medical Management of Topical Ulcers," *Angiology*, 19:7, August 1968. This paper discusses an uncontrolled study involving the management of 60 patients with topical ulcers treated with Biozyme ointment or Biozyme powder. Bacteriologic data are available on only 17 patients. Both defects render the experiment inadequate and poorly controlled. 21 CFR 314.111(a)(5)(ii)(a)(3) and (4).

4. Spencer, M. C., "Treatment of Chronic Skin Ulcers by a Proteolytic Enzyme-Antibiotic Preparation," *Journal of the American Geriatrics Society*, 15:3 219-233, 1967. During a 2-year period, 187 chronic skin ulcers in 74 patients were treated with either Biozyme ointment or lotion. Bacteriologic data found prior to treatment are reported on only nine ulcers. There is no comparison with a control group. 21 CFR 314.111(a)(5)(ii)(a)(4).

5. Spencer, M. C., "Enzymatic Treatment of Chronic Skin Ulcers," *Journal of the American Medical Association*, 1934: 272-274, July 26, 1965. The report deals with 59 infected skin ulcers such as decubitus, neurotrophic, arteriosclerotic, factitial, and diabetic ulcers. All were treated with biozyme ointment. There are no bacteriologic data and no control group. 21 CFR 314.111(a)(5)(ii)(a)(4).

IV. Summary

Armour has failed to demonstrate, by statistical analysis of the data, that Biozyme ointment is effective as a fixed combination, with each component contributing to the claimed effects as is required by 21 CFR 300.50.

V. Legal Arguments

Armour presented the following legal arguments:

A. *Objections to Requirements of Section 430.20(b)(6)(iii)*. While Armour contends that its submission complies with the requirements of 21 CFR 430.20(b)(6)(iii), it also alleges that this provision, which sets forth the format for a hearing request, is not justified by any legal principle and is an unreasonable burden.

The Commissioner emphasizes that he is not taking action on Biozyme because of format deficiencies, but because of fundamental substantive inadequacies in the data submitted.

However, both the courts and administrative agencies have recognized the principle that requests for hearings or other applications and pleadings may be required to be in a standard format and to contain specified types of information. *Federal Power Commission v. Texaco, Inc.*, 337 U.S. 33, 39 (1964); *United States v. Storer Broadcasting Co.*, 351 U.S. 192 (1965); *Pfizer, Inc. v. Richardson*, 434 F.2d 536 (D.C. Cir. 1970); *Dyestuffs & Chemicals, Inc. v. Flemming*, 271 F.2d 281 (8th Cir. 1959), cert. denied, 362 U.S. 911 (1960). The failure to file the correct form in the correct court by a particular date has always constituted a waiver of legal rights.

Section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)) clearly authorizes the Commissioner to promulgate comparable requirements for the Food and Drug Administration as long as they are reasonable. Accordingly, the Commissioner rejects the argument that he does not have authority to require standardized formats or analyses for a hearing request. See generally *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973) and *Pharmaceutical Manufacturers Ass'n v. Richardson*, 318 F. Supp. 301 (D. Del. 1970) upholding FDA's regulatory authority.

B. *Immediate Summary Judgment is Legally Improper*. 1. Armour contends that the Federal Register notice of November 11, 1977 is a "general" notice rather than a "specific" notice and provides no basis upon which summary judgment may issue. It argues that the notice does not satisfy the basic essentials required of a "specific" notice (21 CFR 430.20(b)(1)) because it fails to provide a detailed description and analysis of the specific facts which would support, under 21 CFR 300.50 and 314.111(a)(5), the conclusion that the effectiveness of Biozyme has not been demonstrated. Armour also alleges that

the agency is ignoring studies submitted for Armazyme (NDA 17-665).

Clearly, the November 11, 1977 notice does provide a basis upon which summary judgment may issue. The regulations under which it was issued fully conform with statutory and constitutional requirements as interpreted by the courts. *Weinberger v. Hynson, Westcott & Dunning, supra*.

2. Armour contends that the agency did not meet the burden of showing the absence of a genuine issue as to any material fact and that it has demonstrated genuine and substantial issues of fact. It states that, under the Administrative Procedure Act, 5 U.S.C. 556(d), "the proponent of a rule or order has the burden of proof," and that the agency must show that the firm's submissions do not meet the criteria established by 21 CFR 300.50 and 314.111(a)(5).

Armour, however, has failed to quote the entire relevant part of 5 U.S.C. 556(d): "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof (emphasis added)."

Section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), which governs this procedure, clearly places the burden on a drug manufacturer to prove the safety and effectiveness of a drug. *Hess & Clark, Division of Rhodia, Inc. v. Food and Drug Administration*, 495 F.2d 975 (D.C. Cir. 1974). The Supreme Court in *Hynson, supra*, upheld the validity of the form of notice used in withdrawal proceedings involving a lack of substantial evidence of effectiveness, as here.

Armour also cites a statement by the Commissioner in the preamble to 21 CFR 12.24 (formerly § 2.113) published in the Federal Register of November 23, 1976 (41 FR 51706), that "rejection of a hearing request is permissible under § 2.113(b)(2) and (3) only if the request fails on its face to provide the required information * * *. The Commissioner will not * * * attempt to determine whether the evidence identified is credible or sufficient, merely that it is not such that even if it were established it would have to be disregarded."

However, the same regulation cited by Armour, 21 CFR 12.24(b), establishes six requirements, all of which have to be met for a hearing to be granted. These include requirements that the conditions of §§ 314.200 and 430.20(b) must be satisfied. It is clear from the discussion in Part IV of this notice that Armour has not met these threshold requirements.

3. Armour contends that 21 CFR 430.20(b)(2) requires that it be given the opportunity to submit written comments

and to request an informal conference on a proposal to amend or revoke a regulation and that it was not given that opportunity prior to the publication of the November 11, 1977 Federal Register notice.

The Commissioner disagrees with Armour's contention. Section 430.20(b)(2) provides:

An opportunity shall be given for interested persons to submit written comments and to request an informal conference on the proposal, unless such notice and opportunity for comment and informal conference have already been provided in connection with the announcement of the reports of the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, to persons who will be adversely affected * * * (emphasis added).

Such notice was given in the notice published in the Federal Register of July 8, 1972 (37 FR 13497), which announced the evaluation of the NAS/NRC report on Biozyme Ointment and requested the submission of additional data.

C. A Hearing Should be Held in the Public Interest. Armour contends that, regardless of whether there are genuine and substantial issues of fact, a hearing would be in the public interest and the Commissioner should, in the exercise of his discretion, grant a hearing. In this case, granting a hearing would not be in the public interest because (1) a genuine and substantial issue of fact to justify a hearing does not exist, (2) there is a lack of substantial evidence to establish the effectiveness of the product, and (3) a hearing would be a futile exercise and a waste of time. *Pharmaceutical Manufacturers Ass'n v. Richardson, supra*.

VI. Findings

On the basis of the foregoing, the Commissioner finds that there is a lack of substantial evidence of effectiveness that Biozyme Ointment has the effect it is represented to have under the condition of use prescribed, recommended, or suggested in its labeling. Armour has not presented any data to demonstrate the existence of a genuine and substantial issue of fact requiring a hearing. Accordingly, Armour's request for a hearing is denied and NDA 50-020 is withdrawn.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 507, 52 Stat. 1052-1053, as amended, 59 Stat. 463, as amended (21 U.S.C. 355, 357)) and under authority delegated to the Commissioner (21 CFR 5.1), notice is given that the order of November 11, 1977 (42 FR 58739), the effective date of which was postponed by the order of March 10, 1978 (43 FR 9801), will become effective June 24, 1980. Certificates of

safety and effectiveness previously issued for Biozyme Ointment for human use and the regulations under which they were issued (21 CFR 444.40 and 444.540a) are revoked. No new certificates will be issued. Thirty days will be allowed for recall of all outstanding stocks of the affected drug.

Dated: June 5, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-18912 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 510

[Docket No. 78N-0206]

New Animal Drugs; Records and Reports on New Animal Drugs and Antibiotics that were Approved Before June 20, 1963

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is extending the requirements for periodic reporting of drug experience for new animal drugs, including antibiotics and medicated premixes bearing or containing new animal drugs, approved before June 20, 1963. This information will provide a basis to require appropriate revisions of the conditions of use of products and, when necessary, to revoke the authority for their use. This action will also facilitate evaluation of such new animal drug products to assure compliance with the requirements of the Federal Food, Drug, and Cosmetic Act (the act).

EFFECTIVE DATE: July 24, 1980.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 9, 1979 (44 FR 1983), FDA proposed to amend § 510.310 (21 CFR 510.310) of the new animal drug regulations to include additional reporting requirements for new animal drugs (including antibiotics and medicated feed premixes bearing or containing new animal drugs) approved before June 20, 1963. The amendments require the initial submission of current drug marketing information and the subsequent submission of yearly reports concerning marketing, clinical experience, and safety and effectiveness of the product.

The comment period was extended to May 11, 1979, by a notice published in the Federal Register of April 3, 1979 (44

FR 19438). The Upjohn Co. and the American Veterinary Medical Association submitted comments.

1. One comment interpreted the proposed regulation as requiring sponsors to collect new data and argued that the regulation would therefore be very costly to drug sponsors.

The regulation does not impose additional testing requirements. The type of information that is required includes what sponsors are required to maintain under the current good manufacturing practice regulations in Parts 210 and 226 (21 CFR Parts 210 and 226). The regulation also requires that sponsors submit the results of any studies already conducted or any experience, positive or negative, reported by persons using the drug.

2. A comment contended that FDA does not need the required information because any product that has been on the market since 1963 must be safe and effective.

The length of time that a new animal drug has been marketed does not demonstrate its safety and effectiveness. The act requires that for new animal drugs, safety be demonstrated by adequate tests and that effectiveness be demonstrated by adequate and well-controlled investigations, including field investigation. The agency has a continuing obligation under section 512(e) to ensure that marketed products are demonstrated to be safe and effective. The demonstration of safety and effectiveness, therefore, is not static and a demonstration prior to 1963 does not ensure a safe and effective product forever. This regulation will assist the agency in determining whether the provisions of section 512(e) of the act should be invoked for a given drug product, i.e., whether products approved before 1963 continue to be demonstrated to be safe and effective.

3. A comment contended that the ultimate effect of the proposal will be the withdrawal of additional drugs from the marketplace.

Drugs may be withdrawn from the market based on reports of drug experience. The more likely result of such information will be a modification of product formulation or labeling.

4. One comment suggested that the regulation be changed to require the following:

- a. The submission of package labels, brochures, package inserts, and marketing information on products approved before June 20, 1963;
- b. The cancellation of NADA approvals of pre-1963 drugs that are no longer marketed;
- c. The submission of information regarding the volume of drug produced.

the amount distributed, and the labeling changes;

d. The presence of cautionary labeling indicating that proof of safety and effectiveness under current scientific standards is not required for drugs approved before June 20, 1963;

e. The submission to FDA of reports regarding adverse reactions or the failure of the drug to produce the indicated effect.

Suggestions a., b., c., and e. are consistent with the requirements of the regulation. Suggestion d. is unacceptable in light of FDA's statutory responsibility under section 512(e) of the act to ensure that products continue to be demonstrated to be safe and effective.

5. A comment objected to the proposal on the grounds that (1) the need for the regulations was not discussed in the proposal; (2) implementation of the regulation would adversely affect the capability of FDA to review new animal drug applications; and (3) the regulation duplicated other FDA reporting procedures.

The agency disagrees. As stated in the proposal, the regulation is necessary because it will assist FDA in making a determination whether there are grounds for invoking section 512(e) of the act. This section provides for withdrawal of approval of applications for new animal drugs and places on FDA a continuing obligation to ensure that new animal drugs are demonstrated to be safe and effective. Furthermore, the regulation is necessary because the single report requirement in § 510.310, which had to be complied with by January 1972, is now grossly out-dated. As stated in the proposal, revision of § 510.310 will subject all new animal drugs to the same reporting requirements. This will provide for equitable treatment in regulation of all new animal drugs (pre- and post-1963) and furnish equal public health protection to persons using new animal drug products.

The argument concerning administrative review time is likewise misplaced. The comment referred to submission of new animal drug applications and supplements by sponsors of applications. The review of marketed drugs is handled by a different organizational unit within FDA, and the added workload to the reviewers of marketed drugs will not affect the unit reviewing applications seeking marketing approval.

Furthermore, the regulation does not unduly duplicate requirements under the Drug Listing Act of 1972 for submission of product labeling currently in use. This minimal duplication does not appear to be significant and cannot outweigh the

necessity of ensuring that the correct, current labeling for a product subject to review is available to the individual reviewing marketing experience.

PART 510—NEW ANIMAL DRUGS

FDA concludes that the comments received do not justify any change in the regulation as proposed. Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) Part 510 is amended by revising § 510.310 to read as follows:

§ 510.310 Records and reports for new animal drugs approved before June 20, 1963.

(a) This section applies to new animal drugs, including antibiotics and medicated feed premixes bearing or containing new animal drugs, approved before June 20, 1963, on the basis of a new drug application, master file, antibiotic regulation, or food additive regulation.

(b) Sponsors of new animal drugs identified in paragraph (a) of this section shall submit the following information, in duplicate, for each dosage form of each such drug by November 21, 1980:

(1) If the new animal drug is currently marketed:

(i) A copy of the label on the package of the drug and of the package insert or brochure bearing directions or information for use of the product.

(ii) If the label, brochure, or package insert is not identical in content to the one for the new animal drug as originally approved, the sponsor shall also report what changes have been made (other than minor changes in arrangement or printing or changes of an editorial nature) and explain why they were made, and shall submit data supporting such changes if the data have not previously been submitted.

(iii) If clinical experience reported to or otherwise received by the sponsor indicates the need for change in claims for effectiveness or in side effects, warnings, or contraindications in the labeling or advertising currently in use, the sponsor shall submit a supplemental application proposing such changes in the labeling and a showing that any advertising will be appropriately revised.

(iv) If the clinical or other experience reported to or otherwise obtained by the sponsor has revealed any information concerning any side effect, injury, toxicity, or sensitivity reaction, or any unexpected incidence or severity thereof, which by kind, or incidence or severity is not fully disclosed in the

labeling, whether or not determined to be attributable to the drug, this information shall be submitted. Such information shall include full reports of all available information with respect to any deaths apparently related to a drug administration whether or not determined to be attributable to the drug. Any such information previously submitted need not be resubmitted.

(v) If the clinical or other experience reported to or otherwise obtained by the sponsor within the past 2 years has revealed any information with respect to a distributed batch concerning any mixup in the drug or its labeling with another article; any bacteriological or any significant chemical, physical, or other change or deterioration of the drug; or any failure of one or more distributed batches to meet specifications established in the new animal drug application or in the antibiotic regulations, this information shall be submitted. Any unresolved experience of the kinds listed in this paragraph shall be reported even though it occurred before the 2-year period.

(2) If the new animal drug is no longer marketed, but it is the subject of an approval that is still in effect:

(i) Identification of the dosage form of the new animal drug or medicated feed premix by its established and proprietary names, if any;

(ii) The formula showing quantitatively each ingredient of the drug to the extent disclosed on the label (a copy of the label will ordinarily fulfill this requirement);

(iii) The route of administration;

(iv) The new animal drug or other identification or application number;

(v) The date and reason for discontinuing its marketing.

(c) Approval of applications covering products which are no longer marketed may be withdrawn under § 514.115 of this chapter on the basis of a request for its withdrawal submitted in writing by a person holding an approved application. Such withdrawal of approval will be made on the ground that the drug subject to such application is no longer being marketed, provided information is furnished in support of this finding and provided certain other conditions exist as specified in that section. A written request for such withdrawal will be construed as a waiver of an opportunity for a hearing.

(d) Sponsors of new animal drugs identified in paragraph (a) of this section are exempt from the reporting requirements of this section if: (1) their product is no longer marketed, and information has previously been submitted to the Food and Drug Administration regarding

discontinuation of marketing including the date and reason for such action, and any existing approval for the product has been withdrawn; or (2) as a result of a supplemental approval granted beginning June 20, 1983, the sponsor is presently reporting under the requirements of § 510.300.

(e) After the submission of the initial reports required by paragraph (b) of this section, each sponsor shall maintain records and submit yearly reports of the kinds required by § 510.300.

(f) All reports required by this section shall be addressed to the Division of Surveillance (HFV-210), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and shall be distinctly marked "New Animal Drug (or Antibiotic) Report" together with the applicable new animal drug application number, antibiotic account number, or other identification on the envelope.

Effective date. This order shall be effective July 24, 1980.

(Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)))

Dated: June 18, 1980.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 80-18754 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 510 and 558

New Animal Drugs and New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a new animal drug application (NADA) filed for Garver Feed & Supply Co., Inc., providing for safe and effective use of a 0.8-gram-per-pound tylosin premix for making complete swine feeds, and adding the firm to the list of approved NADA sponsors.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT:

Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Garver Feed & Supply Co., Inc., P.O. Box 7756, Madison, WI 53707, is the sponsor of NADA 119-145 submitted on its behalf by Elanco Products Co. The NADA provides for use of a premix containing 0.8 gram of tylosin (as tylosin phosphate) per pound for making

complete swine feeds used to increase rate of weight gain and to improve feed efficiency.

Approval of this application is based on safety and effectiveness data contained in Elanco Product Co.'s approved NADA 12-491. Use of the data in NADA 12-491 to support this application has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367), the approval of this NADA has been treated as would an approval of a category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 12-491.

In accordance with the provisions of Part 20 (21 CFR Part 20), promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information supporting approval of this application is released for public examination at the office of the Hearing Clerk (HFA-305), Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 558 are amended as follows:

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

(c) ***

(1) ***

Firm name and address, and Drug labeler code

Garver Feed & Supply Co., Inc., P.O. Box 7756, Madison, WI 53707-020966.

(2) ***

Drug labeler code, and Firm name and address

020966—Garver Feed & Supply Co., Inc., P.O. Box 7756, Madison, WI 53707.

2. In Part 558, § 558.625 is amended by adding a new paragraph (b)(70) to read as follows:

§ 558.625 Tylosin.

(b) ***
(70) To 020966: 0.8 gram per pound; paragraph (f)(1)(vi) (a) of this section.

Effective date. This amendment is effective June 24, 1980.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 13, 1980.

Terence Harvey,
Acting Director for Bureau of Veterinary Medicine.

[FR Doc. 80-18930 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 556 and 558

Tolerances for Residues of New Animal Drugs in Food and New Animal Drugs for Use in Animal Feeds; Novobiocin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. providing for safe and effective use of a duck feed containing novobiocin for the control of certain susceptible Pasteurella infections.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT:

Thomas V. Raines, Bureau of Veterinary Medicine (HFV-149), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed a supplemental NADA (12-375) providing for use of a novobiocin-containing feed for control of infectious serositis and fowl cholera in ducks. The drug is currently approved for use in the feed of chickens for treatment of breast blisters, staphylococcal synovitis, and generalized staphylococcal infections; turkeys for treatment of breast blisters, control of fowl cholera, treatment of staphylococcal synovitis and generalized staphylococcal infections; and mink for treatment of generalized infections, abscesses, or urinary infections. Because use of the drug is already regulated at the requested use level in closely related major species

(i.e., chickens and turkeys), the Bureau of Veterinary Medicine concludes that approval of this supplement poses no significant increased human risk from exposure to residues of novobiocin. Therefore, in accordance with the Bureau's supplemental approval policy (42 FR 64367, December 23, 1977), approval of this supplemental NADA does not require reevaluation of the human safety data supporting the parent application.

The current regulations provide for waiver of the provisions of section 512(m) of the act for use of novobiocin in chicken, turkey, and mink feeds. Use of this drug in duck feed does not meet the criteria for this waiver. The regulations are amended to specify that the waiver is limited to novobiocin-containing chicken, turkey, and mink feeds.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 552) and the freedom of information regulations in § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information supporting approval of this application may be seen in the office of the Hearing Clerk (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant effect on the human environment. Therefore, an environmental impact statement will not be prepared. The Bureau finding of no significant impact and the evidence supporting this finding is contained in an environmental impact analysis report (see 21 CFR 25.1(j)) which may be seen in the office of the Hearing Clerk (HFA-305), see address above.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 556 and 558 are amended as follows:

§ 556.460 [Amended]

1. In Part 556, § 556.460 *Novobiocin* is amended by revising the phrase "chickens and turkeys" to read "chickens, turkeys, and ducks".

2. In Part 558, § 558.415 is amended by revising paragraph (d) and by adding new paragraph (f)(4) to read as follows:

§ 558.415 *Novobiocin*.

(d) *Special considerations*. Finished chicken, turkey, and mink feeds conforming to the requirements of this section are not required to comply with the provisions of section 512(m) of the act.

(f) *Conditions of use*. * * *

(4) *Ducks*—(i) *Amount*. Novobiocin, 350 grams per ton.

(ii) *Indications for use*. Control of infectious serositis and fowl cholera in ducks caused by *Pasteurella anatis* and *P. multocida*, susceptible to novobiocin.

(iii) *Limitations*. Administer, as sole ration, for 5 to 7 days, continue medication for 14 days if necessary, repeat if reinfection occurs; discontinue use at least 3 days before slaughter; not for use in laying ducks.

Effective date. June 24, 1980.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 18, 1980.

Terence Harvey,

Acting Director for Bureau of Veterinary Medicine.

[FR Doc. 80-18932 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed for V.P.O., Inc., providing for safe and effective use of 4- and 8-grams-per-pound tylosin premixes for making complete swine feeds.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: V.P.O., Inc., 4444 S. 76th St., Omaha, NE 68127, is the sponsor of supplemental NADA 98-431 providing for use of premixes containing 4 and 8 grams of tylosin (as tylosin phosphate) per pound, in addition to an existing approval for use of a 10-grams-per-pound premix, for making complete swine feeds used to increase rate of weight gain and to improve feed efficiency.

Approval of this application is based on safety and effectiveness data contained in Elanco Products Co.'s approved NADA 12-491. Use of the data in NADA 12-491 to support this application has been authorized by Elanco. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (see the Federal Register of December 23, 1977 (42 FR 64367)), approval of this supplemental NADA does not require reevaluation of the safety and effectiveness in NADA 12-491 or in NADA 98-431.

In accordance with the provisions of Part 20 (21 CFR Part 20) promulgated under the Freedom of Information Act (5 U.S.C. 522) and the freedom of information regulations in § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application is released for public examination at the office of the Hearing Clerk (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625, by revising paragraph (b)(25) to read as follows:

§ 558.625 *Tylosin*.

(b) * * *

(25) To 043743: 4, 8, and 10 grams per pound; paragraph (f)(1)(vi)(a) of this section.

Effective date. This amendment is effective June 24, 1980.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 18, 1980.

Robert Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 80-18931 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 1308

Classification of Dextropropoxyphene as a Narcotic Drug in Schedule IV of the Controlled Substances Act

Cross Reference: For a document issuing a final rule by the Drug Enforcement Administration regarding Classification of Dextropropoxyphene as a Narcotic Drug in Schedule IV of the Controlled Substances Act, See FR Doc 18841 appearing on page 42264 of this issue of the Federal Register.

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Classification of Dextropropoxyphene as a Narcotic Drug in Schedule IV of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: Final rule.

SUMMARY: This final rule, in addition to the Schedule IV controls which are currently imposed upon dextropropoxyphene, involves the following: (1) The drug's control by this Order as a Schedule IV narcotic drug, (2) restriction on using the drug in Narcotic Treatment Programs, (3) recordkeeping by practitioners who dispense other than by prescribing or administering the drug, (4) requirements for export permits to export the drug from the United States, and (5) the prohibition of importation of the drug into the United States.

EFFECTIVE DATE: The effective date for the requirements imposed by this Order is July 24, 1980, unless otherwise set forth below in the supplementary information section.

FOR FURTHER INFORMATION CONTACT: William M. Lenck, Chief Counsel, Drug Enforcement Administration, telephone number (202) 633-1276.

SUPPLEMENTARY INFORMATION: On January 21, 1980, the Administrator of the Drug Enforcement Administration published a notice of proposed rulemaking to amend § 1308.14 of Title 21 of the Code of Federal Regulations (CFR) by classifying dextropropoxyphene as a narcotic. This classification matter originated with the Assistant Secretary of Health, Department of Health, Education and Welfare and was contained in his scientific and medical evaluation and

recommendations concerning dextropropoxyphene which he provided to the Administrator of the Drug Enforcement Administration in a letter dated September 7, 1979, along with his recommendation that then-pending petitions to control dextropropoxyphene in Schedule II of the Controlled Substances Act be denied. The Assistant Secretary's proposal set forth an analysis of dextropropoxyphene as a narcotic; and to supplement that analysis, Dr. J. Richard Crout, Director, Bureau of Drugs, Food and Drug Administration, provided additional evidence in support of the position that dextropropoxyphene is an opiate, and hence, a narcotic drug, as defined in Sections 102 (17) and (16) of the Controlled Substances Act [21 U.S.C. 802 (17), (16)]. The notice published on January 21, 1980 (45 FR 3923) provided an opportunity for all interested persons to submit comments on the matter no later than February 20, 1980.

One letter commenting on the proposed rule was received by the Drug Enforcement Administration from Eli Lilly and Company. Lilly did not oppose the classification of dextropropoxyphene as a narcotic within the meaning of the Controlled Substances Act.

Lilly included in its comment its observation concerning the dependence producing characteristics of dextropropoxyphene (which it markets as Darvon) as compared to other narcotics such as morphine and codeine, which are in Schedule II. With its observations, Lilly also provided DEA with a copy of a submission it earlier presented to the FDA Drug Abuse Advisory Committee in April, 1979, in which Lilly's observations and dependence data compares dextropropoxyphene with morphine and codeine, and in which they claim that dextropropoxyphene is quantitatively, but not qualitatively, less able to produce or sustain dependence than morphine and codeine.

Although no other comments on the notice of proposed rulemaking concerning dextropropoxyphene were received, it should be noted that the control of dextropropoxyphene as a narcotic has gained international attention. On April 17, 1980, the Secretary-General of the United Nations advised the Secretary of State of the United States that the Commission on Narcotic Drugs (CND) has decided to include dextropropoxyphene in Schedule II of the Single Convention on Narcotic Drugs (NAR/CL.3/1980, G/SO 421/11(1)). The United States, as a party to that Convention, is required to impose

"periodical permits" (quotas) on the domestic manufacture of dextropropoxyphene. Quotas are a statutory and regulatory control measure imposed by the federal Controlled Substances Act and DEA regulations only upon controlled substances in Schedule I or II.

The Administrator of the Drug Enforcement Administration is issuing this final order presently, mindful that this action might well be succeeded by DEA imposing further domestic controls upon dextropropoxyphene to the extent compelled by the United States international obligations as a result of dextropropoxyphene being included in Schedule II of the Single Convention on Narcotic Drugs.

Control as Narcotic Drug

Accordingly, based upon the Assistant Secretary for Health's medical and scientific evaluation of dextropropoxyphene as a narcotic, the Administrator finds that dextropropoxyphene is an opiate and therefore a narcotic drug as defined in Sections 102 (17) and (16) of the Controlled Substances Act [21 U.S.C. 802 (17), (16)]. Hence, under the authority vested in the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that § 1308.14 of Title 21 of the Code of Federal Regulations (CFR) be amended by deleting subsection (f)(1) in its entirety, renumbering existing subsection (f)(2) as (f)(1), and by adding a new subsection (b)(2) to read:

§ 1308.14 Schedule IV.

* * * * *

(b) *Narcotic Drugs.* * * *

* * * * *

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxabutane) 9273

Narcotic Requirements and Effective Dates

DEA currently requires all manufacturers, distributors, practitioners, importers and exporters of dextropropoxyphene to comply with all applicable Schedule IV controlled substances requirements concerning registration, security, labeling and packing, inventory and recordkeeping, prescriptions, importation and exportation. The classification of dextropropoxyphene as a narcotic will add the following requirements:

1. *Narcotic Treatment Programs.* Under the provisions of the Narcotic Treatment Act of 1974 (Pub. L. 93-281, May 14, 1974) and the regulations of

DEA and FDA, narcotic treatment programs are currently using methadone, a Schedule II narcotic drug, in detoxification and maintenance treatment. However, a smaller number of practitioners have also been using dextropropoxyphene to treat drug dependent persons.

The classification of dextropropoxyphene as a narcotic drug in Schedule IV by this final order will result in practitioners currently treating persons for drug dependence with dextropropoxyphene no longer being able to do so since its status as a schedule IV narcotic drug places it under the provisions of the Narcotic Treatment Act of 1974 and the applicable DEA and FEA regulations. Since the only drug authorized to be used under the FDA regulations (21 CFR 291) is methadone, practitioners currently using dextropropoxyphene to treat drug dependent persons must terminate such activity within 120 days of the publication of this order.

Two possible alternatives available within the 120 day period are for the patients involved to obtain treatment in an existing methadone program or for the concerned practitioner to seek FDA authority to commence a methadone treatment program.

2. *Records.* Any person registered as a practitioner to dispense dextropropoxyphene as a Schedule IV narcotic, is required to keep records pursuant to 21 CFR 1304.21 and 1304.28 and shall maintain such records on dextropropoxyphene. Registered practitioners whose dispensing activities of dextropropoxyphene are limited to administering or prescribing are not affected by these provisions (21 CFR 1304.03(b)).

3. *Exportation.* Any person who intends to export dextropropoxyphene who is not registered to export Schedule IV narcotic drugs must submit an application for registration to do so, pursuant to §§ 1311.21 and 1312.21 of Title 21, Code of Federal Regulations. All exportation of dextropropoxyphene shall be in compliance with 21 CFR 1312.23 which requires the registered exporter to obtain a permit from DEA for such exportation.

4. *Importation.* The provisions of Section 1002 of the Controlled Substances Import and Export Act (21 U.S.C. 952) only allow the importation of certain controlled substances including any narcotic drug in Schedule IV "during an emergency in which domestic supplies of the substance or drug are found by the Attorney General to be inadequate" (Section 1002(a)(2)(A)) or "in any case in which the Attorney General finds that competition among

domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 303" (Sec. 1002(a)(2)(B)). Since this final order classifies dextropropoxyphene as a narcotic drug in Schedule IV, and no findings have been requested or made relative to providing authority to import dextropropoxyphene when classified as a Schedule IV narcotic drug, no import permits will be granted by DEA 180 days after the publication of this final order unless the required authority to import dextropropoxyphene is obtained pursuant to Section 1002(a)(2) (A) or (B) and applicable regulations.

(Secs. 201, 202, 501(b), 84 Stat. 1245, 1246, 1248, 1249, 1250, 1251, 1252, 1271, 21 U.S.C. 811, 812, 871(b))

Dated: June 17, 1980.

Peter B. Bensinger,
Administrator, Drug Enforcement
Administration.

[FR Doc. 80-10641 Filed 6-23-80; 8:45 am]

BILLING CODE 4410-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-1521-8]

Oregon; Approval and Promulgation of the Implementation Plan

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA today announces its approval of portions of the State Implementation Plan (SIP) for Oregon which were received by EPA on June 27 and July 6, 1979. EPA is also taking final action to conditionally approve other elements of Oregon's SIP revision. In accordance with conditional approval, the State of Oregon is required to submit to EPA materials to satisfy the various conditions within six months from the date of this publication. These plan revisions were prepared by the State of Oregon to meet the requirements of Part D (Plan Requirements for Non-attainment Areas) of the Clean Air Act (hereafter referred to as the Act), as amended in August 1977 (42 U.S.C. 1857 et seq.).

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT:
Michael J. Schultz, Coordination and
Planning Section, M/S 625,
Environmental Protection Agency,
Region 10, 1200 Sixth Avenue, Seattle,

WA 98101. Telephone No. (206) 442-1226, FTS 399-1226.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Background
 - A. Designation Process
 - B. Revision Process
 - C. Review and Approval Process
 - D. Comments on Proposed Rulemaking
 - E. Conditional Approval
- III. Plan Review
 - A. General Regulations
 - 1. New Source Review
 - 2. Volatile Organic Compounds
 - 3. Inspection and Maintenance
 - 4. Other Rules and Regulations
 - B. Non-Attainment Area Plans
 - 1. Extension Requests
 - 2. Carbon Monoxide
 - a. Portland
 - b. Eugene-Springfield AQMA
 - c. Salem
 - d. Medford-Ashland AQMA
 - 3. Ozone
 - a. Portland
 - b. Eugene-Springfield AQMA
 - c. Salem
 - d. Medford-Ashland AQMA
 - 4. Total Suspended Particulate (TSP)
 - a. Portland
 - b. Eugene-Springfield
 - c. Medford-Ashland

I. INTRODUCTION

EPA finds that good cause exists for making the action taken in this notice immediately effective for the following reasons: (1) Implementation plan revisions are already in effect under State law and EPA approval poses no additional regulatory burden, and (2) EPA has a responsibility under the Act to take final action on the portion of the SIP which addresses Part D requirements by July 1, 1979 or as soon thereafter as possible.

This notice follows the January 21, 1980 issue of the *Federal Register* (45 FR 3929), wherein EPA published a notice of proposed rulemaking which described the nature of the Part D SIP revisions, discussed certain provisions of the Oregon Part D SIP revisions which in EPA's judgment did not comply with the requirements of the Act, and requested public comment. State and local agencies of Oregon submitted official responses to the proposed rulemaking. No other official comments specific to this rulemaking were received.

The EPA has reviewed comments received on the proposed rulemaking and is taking the following actions:

1. *Approval.* Carbon monoxide (CO) attainment plans for the Portland, Salem, Eugene-Springfield, and Medford-Ashland non-attainment areas.
2. *Conditional Approval.* (a) Ozone (O₃) attainment plans for the Portland, Salem, and Medford-Ashland non-

attainment areas; (b) New source review (NSR) regulations; (c) Stationary source hydrocarbon regulations (including source test procedures and compliance schedules); and (d) the automobile inspection and maintenance (I/M) program for Portland. The conditional approval requires DEQ to submit additional materials to satisfy the conditions.

The status of the Eugene-Springfield O_3 area which was redesignated to attainment on January 21, 1980 (45 FR 3929) and the TSP attainment plans for Portland, Eugene-Springfield, and Medford-Ashland non-attainment areas are discussed. Because a Part D plan is no longer required for Eugene-Springfield O_3 , and the TSP non-attainment plans for Portland, Eugene-Springfield, and Medford-Ashland are not due yet, EPA is not taking action with respect to these plans at this time.

In this notice, (a) the SIP is summarized, (b) key issues relating to approval and conditional approval are discussed, (c) summaries of comments on EPA's proposed rulemaking are provided, and (d) EPA's final action on each portion of the SIP is described. It is important to note that actions being taken in this publication are limited to those requirements contained in Part D of the Act.

Further information in this notice is divided into two sections entitled "Background" and "Plan Review." The first section outlines the background leading to the development of the Oregon SIP in relation to the Clean Air Act Amendments of 1977. The Second Section, entitled "Plan Review", is divided into two major sub-sections. The first, "General Regulations", discusses regulatory portions of the plan applicable to more than one non-attainment area; e.g., Volatile Organic Compounds (VOC), New Source Review (NSR), Inspection and Maintenance (I/M), etc. The second section, "Non-Attainment Area Plans," provides a description of each pollutant specific plan. Deficiencies, the State and local responses to EPA's proposed rulemaking, and EPA final actions are summarized at the end of each topical discussion.

II. BACKGROUND

A. Designation Process

Pursuant to the requirements of Section 107(d) of the Act, the EPA published in the Federal Register on March 3, 1978 (43 FR 8962) and on October 19, 1979 (44 FR 60341) a designation of the attainment status of certain areas in the State of Oregon with respect to the National Ambient Air

Quality Standards (NAAQS) for total suspended particulates (TSP), carbon monoxide (CO), and ozone (O_3). This designation process triggered required revisions to the Oregon State Implementation (SIP) as discussed below.

B. Revision Process

The 1977 Amendments to the Act require States to make extensive revisions to their State Implementation Plans (SIPs). These revisions fall into three major areas:

- (1) Provisions for attainment and maintenance of NAAQS in those areas where air quality standards are being violated (required in Part D of the Act);
- (2) Plans for prevention of significant deterioration (PSD) to protect those areas with clean air (required in Part C of the Act); and
- (3) General SIP requirements which have statewide applicability (e.g., Section 128—State Boards).

This notice presents the results of EPA's review of plans developed by the State of Oregon Department of Environmental Quality (DEQ) to comply with the requirements of Part D of the Act. A PSD plan, requirements for which may be found in 40 CFR 51.24, and general SIP requirements having statewide application were also developed by the State and submitted for approval. Rulemaking for these latter two plan revisions will be treated in separate actions at a later date.

The Oregon Part D SIP revision was developed and submitted to EPA to satisfy the requirements of the Act as amended in 1977 and is intended to update the presently approved SIP. Specific guidance for an approvable Part D SIP is described in a General Preamble published in the April 4, 1979, Federal Register (44 FR 20372); supplemented on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). This guidance is incorporated by reference and will not be restated here. Additional guidance was published in the "EPA/DOT Transportation Planning Guidelines" and the "Transportation SIP Checklist." General requirements for all SIPs are contained in 40 CFR Part 51.

In accordance with Section 174 of the Act, primary responsibility for preparing carbon monoxide (CO) and ozone (O_3) control plans was delegated by the Governor to organizations of local elected officials. In the State of Oregon, the designated organizations are the Metropolitan Service District (MSD) for the Portland non-attainment area, (responsibilities for this area resided with the Columbia Regional Association

of Governments (CRAG) until December 31, 1978 when CRAG was abolished and its responsibilities assumed by the MSD); the Mid-Willamette Valley Council of Governments (MWVCG) for the Salem non-attainment area; the Lane Council of Governments (LCOG) for the Eugene-Springfield non-attainment area; and the Jackson County Board of Commissioners for the Medford-Ashland non-attainment area. As a result of these designations, a description of the responsibilities to be assumed by the various State and local agencies involved in the planning process was developed. Designated lead agencies were generally responsible for the transportation control plan development, while the State in general retained responsibility for stationary source control efforts. The locally prepared plans were submitted to DEQ and combined with the State-developed portions of the SIP revisions for submission to EPA.

One of the more notable aspects of the SIP revision process in Oregon has been the extremely active public participation program. The thrust of this program has centered on three local, broad-based advisory committees. These committees were jointly appointed by DEQ and local governments in the Portland, Eugene, and Medford area, and served to advise DEQ as well as the local lead agencies on SIP revisions. Because of the relatively non-complex SIP revision requirements for Salem, public participation in this area was handled through advisory groups of the MWVCG.

Activities common to the advisory committees included participation in a clean air workshop sponsored by the Oregon Environmental Quality Council (EQC); testifying before the 1979 Oregon Legislature on bills affecting open burning, indirect sources, inspection and maintenance, banking and offsets; preparing citizen involvement brochures; advising and reviewing rules and strategies relating to the 1979 SIP revisions; and testifying before the EQC on the proposed SIP revisions.

The 23-member Portland area advisory committee was formed in June 1978, and held 22 major meetings and numerous other sub-committee meetings by June 1, 1979. Accomplishments included development of an interstate working agreement with the Clark County Regional Planning Council (Washington) and evaluation and recommendations on appropriate control levels for particulate sources.

The 25-member Eugene area advisory committee was formed in February 1978, and held 23 meetings through June 1979.

Accomplishments included recommendations for appropriate particulate emission standards for industrial sources and in-depth studies of road dust sources and control measures.

The 23-member Medford area advisory committee was formed in September 1977 and held over 100 hours of public meetings. Accomplishments included recommendations on a particulate control strategy; modification of local slash burning mixing height criteria; establishment of a daily telephone advisory for air quality data; establishment of voluntary inspection and maintenance program; and adoption of a stringent offset program.

After working closely with EPA Region 10, draft SIP revisions were completed and public hearings held in May 1979. Based on comments received, modifications were made and SIP revisions were adopted by the Oregon EQC on June 8 and June 29. The SIP was officially submitted to EPA on June 20 and 29, 1979. Circumstances surrounding this two-part submission were discussed in two Federal Register notices of plan availability: June 6, 1979 Federal Register (44 FR 39485) and July 26, 1979 Federal Register (44 FR 43756).

On November 1, 1979, EPA met with DEQ to discuss noted deficiencies in the State's Part D revision. Results of this meeting and EPA's review of the SIP submittal served as the basis for a notice of proposed rulemaking published in the January 21, 1980 Federal Register (45 FR 3929).

C. Review/Approval Process

It is important for reviewers of this final rulemaking to understand the overall nature of SIPs and of EPA's review and approval role, with special focus on the Part D requirements of the Act. Central to such an understanding is recognition that designations may be characterized on a geographical or a pollutant-specific basis.

Therefore, it is possible for Part D SIP revisions to be adequate for one pollutant or geographical area but inadequate for others. It is EPA's policy to treat the separate revisions as severable to the maximum extent possible. As a result, this notice contains a series of actions rather than a single action. EPA's final position on each of the severable revisions was determined after careful consideration of all responses submitted after the notice of proposed rulemaking was published on January 21, 1980 (45 FR 3929). The following three optional actions were considered for each of the severable Part D revisions:

1. Approval, outright, where the SIP or the portion under consideration meets all requirements;

2. Disapproval where the State does not agree to correct deficiencies or where deficiencies are of such magnitude as to significantly interfere with the basic objective; or

3. Approval with conditions, where deficiencies exist, but where the effect of the deficiency is not judged to be major and where the State has agreed to take those steps necessary to correct the deficiency. In this case, it is EPA's intent that the State proceed expeditiously to correct the noted deficiency.

The reader of this document should keep in mind that the Act presented a very complicated set of requirements which had to be met in a relatively short period of time. The Act also specified that many decisions regarding the selection of air pollution control strategies were to be made at the local governmental level and required adequate public participation. Establishing a process to generate the necessary local governmental and public input to major air quality decisions has been a difficult and time consuming task. Thus while this notice tends to focus on deficiencies in the Part D SIP revisions, EPA feels the State of Oregon and the participating local agencies should be commended for their efforts to involve the public in the SIP revision process.

D. Comments on Proposed Rulemaking

During the comment period following EPA's January 21, 1980 proposed rulemaking on this Part D SIP revision (45 FR 3929), two responses were received from the State of Oregon and one from a local authority. DEQ submitted an official response to each of EPA's proposed actions. The State Department of Transportation responded to specific deficiencies noted in the Portland CO plan. Additional comments on deficiencies in the transportation portion of the Portland CO plan were submitted by the Portland Metropolitan Area Transit Authority (TriMet). Individual comments will be discussed in this notice by subject. No other comments specific to the Oregon plan were received on the proposed rulemaking.

However, one out-of-state commenter submitted extensive comments which it requested be considered part of the record for each state plan. Each of the points raised by the commenter and EPA's response follow. Although some of the issues raised are not relevant to provisions in Oregon's submission, EPA is notifying the public of its response to these comments at this time.

1. The commenter asked that comments it has previously submitted on the Emission Offset Interpretative Ruling as revised on January 16, 1979 (44 FR 3274), be incorporated by reference as part of their comments on each state plan. EPA will respond to those comments in its response to comments on the Offset Ruling.

2. The commenter objected to general policy guidance issued by EPA, on grounds that EPA's guidance is more stringent than required by the Act. Such a general comment concerning EPA's guidance is not relevant to EPA's decision to approve or disapprove a SIP revision since that decision rests on whether the revision satisfies the requirements of Section 110(a)(2). However, EPA has considered the comment and concluded that its guidance conforms to the statutory requirements.

3. The commenter noted that the recent court decision on EPA's regulations for prevention of significant deterioration (PSD) of air quality affects EPA's new source review (NSR) requirements for Part D plans as well. (The decision is *Alabama Power Co. v. Costle*, 13 ERC 1225 (D.C. Cir., June 18, 1979). In the commenter's view, the court's rulings on the definition of "source," "modification," and "potential to emit" should apply to Part D as well as PSD programs. In addition, the commenter believes that the court decision precludes EPA from requiring Part D review of sources located in designated clean areas.

The preamble to the Emission Offset Interpretative Ruling, as revised January 16, 1979, explains that the interpretations in the Ruling of the terms "source," "major modification," and "potential to emit," and the areas in which NSR applies, govern State plans under Part D. (44 FR 3275 col. 3 through 3276 col. 1, January 16, 1979). In proposed rules published in the Federal Register on September 5, 1979, (44 FR 51924), EPA explained its views on how the *Alabama Power* decision affects NSR requirements for State Part D plans. The September 5, 1979 proposal addressed some of the issues raised by the commenter. To the extent necessary, EPA will respond in greater detail to the commenters' concerns in its response to comments on the September 5, 1979, proposal and/or its response to comments on the Offset Ruling.

As part of the September 5, 1979 proposal, EPA proposed regulations for Part D plans in Section 40 CFR 51.18(j). EPA also proposed, for now, to approve a SIP revision if it satisfies either existing EPA requirements, or the proposed regulations. Prior to

promulgation of final regulations, EPA proposed to approve State-submitted relaxations of previously-submitted SIP's, so long as the revised SIP meets all proposed EPA requirements. To the extent EPA's final regulations are more stringent than the existing or proposed requirements, States will have nine months, as provided in Section 406(d) of the Act, to submit revisions after EPA promulgates the final regulations. Since the [State] NSR program satisfied existing [or proposed] requirements for Part D, it is now being approved.

In some instances, EPA's approval of a State's NSR provisions, as revised to be consistent with EPA's proposed or final regulations, may create the need for the State to revise its growth projections and provide for additional emission reductions. States will be allowed additional time for such revisions after the new NSR provisions are approved by EPA.

4. The commenter questioned EPA's alternative emission reduction options policy (the "bubble" policy). As the commenter noted, EPA has set forth its proposed bubble policy in a separate Federal Register publication (44 FR 3720 [January 18, 1979]). EPA will respond to the comments on the "bubble" approach in the final "bubble" policy statement.

5. The commenter questioned EPA's requirement for a demonstration that application of all reasonably available control measures (RACM) would not result in attainment any faster than application of less than all RACM. In EPA's view, the statutory deadline is that date by which attainment can be achieved as expeditiously as practicable. If application of all RACM results in attainment more expeditiously than application of less than all RACM, the statutory deadline is the earlier date. While there is no requirement to apply more RACM than is necessary for attainment, there is a requirement to apply controls which will ensure attainment as soon as possible. Consequently, the State must select the mix of control measures that will achieve the standards most expeditiously, as well as assure reasonable further progress.

The commenter also suggested that all RACM may not be "practicable." By definition, RACM are only those measures which are reasonable. If a measure is impracticable, it would not constitute a reasonably available control measure.

6. The commenter found the discussion in the General Preamble of reasonably available control technology (RACT) for VOC sources covered by Control Technique Guidelines (CTGs) to be confusing in that it appeared to

equate RACT with the guidance in the CTGs. EPA did not intend to equate RACT with the CTGs. The CTGs provide recommendations to the States for determining RACT, and serve as a "presumptive norm" for RACT, but are not intended to define RACT. Although EPA believes its earlier guidance was clear on this point, the Agency has issued a supplement to the General Preamble clarifying the role of the CTGs in plan development. See 44 FR 53761 (September 17, 1979).

7. The commenter suggested that the revision of the ozone standard justified an extension of the schedule for submission of Part D plans. This issue has been addressed in the General Preamble, 44 FR 20377 (April 4, 1979).

8. The commenter questioned EPA's authority to require States to consider transfers of technology from one source type to another as part of LAER determinations. EPA's response to this comment will be included in its response to comments on the revised Emission Offset Interpretative Ruling.

9. The commenter suggested that if a State fails to submit a Part D plan, or the submitted plan is disapproved, EPA must promulgate a plan under Section 110(c), which may include restrictions on construction as provided in Section 110(a)(2)(I). In the commenter's view, the Section 110(a)(2)(I) restrictions cannot be imposed without such a federal promulgation. EPA has promulgated regulations which impose restrictions on construction on any nonattainment area for which a State fails to submit an approvable Part D plan. See 44 FR 38583 (July 2, 1979). Section 110(a)(2)(I) does not require a complete federally-promulgated SIP before the restrictions may go into effect.

Comment: Another commenter, a national environmental group, stated that the requirements for an adequate permit fee system (Section 110(a)(2)(K) of the Act), and proper composition of State boards (Sections 110(a)(2)(F)(vi) and 128 of the Act) must be satisfied to assure that permit programs for nonattainment areas are implemented successfully. Therefore, while expressing support for the concept of conditional approval, the commenters argued that EPA must secure a State commitment to satisfy the permit fee and State board requirements before conditionally approving a plan under Part D.

In those States that fail to correct the omission within the required time, the commenters urged that restrictions on construction under Section 110(a)(2)(I) of the Act must apply.

Response: To be fully approved under Section 110(a)(2) of the Act, a State plan must satisfy the requirements for State boards and permit fees for all areas, including

nonattainment areas. Several States have adopted provisions satisfying these requirements, and EPA is working with other States to assist them in developing the required programs. However, EPA does not believe these programs are needed to satisfy the requirements of Part D. Congress placed neither the permit fee nor the State board provision in Part D. While legislative history states that these provisions should apply in nonattainment areas, there is no legislative history indicating that they should be treated as Part D requirements. Therefore, EPA does not believe that failure to satisfy these requirements is grounds for conditional approval under Part D, or for application of the construction restriction under Section 110(a)(2)(I) of the Act.

E. Conditional Approval

EPA is taking final action to conditionally approve certain elements of Oregon's plan. A discussion of conditional approval and its practical effect appears in supplements to the General Preamble, 44 FR 38583 (July 2, 1979) and 44 FR 67182 (November 23, 1979). In essence, however, conditional approval is an option where minor deficiencies in a State plan can be remedied by submission of additional materials by a specified deadline. EPA will follow the procedures described below when determining whether the State of Oregon has satisfied the conditions by the deadline specified in today's notice.

1. If the State submits the required additional documentation by the scheduled date, EPA will publish a notice in the Federal Register announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the condition is fully met. After review is complete, a Federal Register notice will be published proposing or taking final action either to find the condition has been met and approve the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the necessary documentation by the scheduled date, EPA will publish a Federal Register notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110(a)(2)(I) restrictions on stationary source growth are in effect.

As a part of this final rulemaking, EPA is requiring all conditions identified in this notice to be satisfied, unless

otherwise stipulated, no later than six months from the date of this publication. EPA had earlier proposed (45 FR 3929) July 1, 1980 as the deadline for meeting conditions. However, the DEQ documented the need for a six month period to complete the necessary SIP revisions consistent with public participation procedures. Except for noted conditions on approval, the Oregon Part D SIP revision was found to comply with all requirements, including those contained in Section 172 of the Act.

III. PLAN REVIEW

This section is divided into two major sub-sections. The first, "General Regulations" briefly describes the regulatory portions of the plan applicable to more than one non-attainment area; e.g., Volatile Organic Compounds, New Source Review, Inspection and Maintenance, etc. The second sub-section, "Non-Attainment Area Plans" discusses each area pollutant-specific plan in terms of plan development, emission reduction required, and control strategy proposed. For each major topic within the sub-sections, the following discussions are also presented:

- (1) Deficiencies as noted in the January 21, 1980 proposed rulemaking Federal Register (45 FR 3929).
- (2) Response to the deficiencies noted in the above Federal Register.
- (3) EPA final action.

A. General Regulations

1. New Source Review (NSR)

OAR 340-20-190 through -197 are new regulations intended to fulfill the New Source Review requirements contained in Part D of the Act. Rules -190 through -195 are the "Special Permit Requirements for Sources Locating in or Near Non-Attainment Areas." Rules -196 and -197 provide DEQ with the option of requiring plant site emission limits on sources located anywhere in the State to ensure that emissions are, in fact, consistent with the control strategies and overall airshed carrying capacity.

These rules have, in general, been found to satisfy the NSR requirements of Part D. In particular, the State is requiring offsets, lowest achievable emission rate (LAER) and statewide compliance provisions for major new or modified sources. Statewide compliance requires that all other sources in the State, which are owned by the company applying for a permit to construct or operate a new or modified source in a non-attainment area, be in compliance with applicable rules and regulations.

However, EPA is requiring that the State revise its regulations to correct certain identified deficiencies.

a. *Emission Offset—i. Deficiency.* OAR 340-20-192(1) contains an offset requirement but no offset program was adopted. Such a program is needed if offsets are to be employed.

ii. *State Response.* The DEQ has agreed to develop and include in their SIP a specific emission offset program.

iii. *Final Action.* EPA conditionally approves the emission offset rule provided that the State corrects the above deficiency per their agreement.

b. *Multiple Sources under Single Ownership—i. Deficiency.* OAR 340-20-192(3) does not satisfy the requirement of Section 173(3) of the Act in that the State regulation allows for issuing a permit to construct or operate a new source in a non-attainment area if the other sources owned by the same company in that State are in compliance only "with applicable requirements of the adopted State Plan." The Act requires that other sources owned or controlled by the same company in that state be in compliance "with all applicable emission limitations and standards under the Act."

ii. *State Response.* The DEQ has agreed to amend the language in their multiple source/single ownership limitation to conform to the specific requirements of the Act.

iii. *Final Action.* EPA conditionally approves OAR 340-20-192(3) provided that the State corrects the above deficiency per their agreement.

2. Volatile Organic Compounds (VOC)

Section 172 (a)(2) and (b)(3) of the Act requires sources of volatile organic compounds (VOC) to install, at a minimum, reasonably available control technology (RACT) in order to reduce emissions of this pollutant. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

EPA has developed Control Technology Guidelines (CTG) for the purpose of informing State and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. This information is designed to be useful to both control agencies and industry in defining appropriate RACT requirements for sources within the State. Along with information, each CTG contains recommendations to the States of what EPA calls the "presumptive norm" for RACT. This general statement

of agency policy is based on EPA's current evaluation of the capabilities and problems general to the industry. Where the State finds the presumptive norm applicable to an individual source or group of sources, EPA recommends that the State adopts requirements consistent with the presumptive norm level. The State may, if it chooses, require controls different from those identified in the CTG as long as: (1) Documentation is provided that the regulations do, in fact, represent RACT for that source(s); or (2) the emission reduction is not significantly different than (within 5 percent of) the reduction achievable by implementing the presumptive norm.

As noted in the General Preamble for Proposed Rulemaking on approval of Plan Revisions for Non-Attainment Areas, 44 FR 20376 (April 4, 1979), the minimum acceptable level of stationary source control for ozone SIPs, such as Oregon's includes RACT requirements for VOC sources covered by CTGs issued by EPA through January 1978, and schedules to adopt and submit by each future January additional RACT requirements for sources covered by CTGs issued by the previous January. The submittal date for the first set of additional RACT regulations was revised from January 1, 1980 to July 1, 1980, by Federal Register notice of August 28, 1979 (44 FR 50371). Today's approval of the ozone portion of the Oregon plan is contingent on the submittal of the additional RACT regulations which are due by July 1, 1980 (for CTGs published between January 1978 and January 1979). In addition, by each subsequent January beginning January 1, 1981, RACT requirements for sources covered by CTGs published by the preceding January must be adopted and submitted to EPA. The above requirements are set forth in the "Approval Status" section of the final rule. If RACT requirements are not adopted and submitted to EPA according to the time frame set forth in the rule, EPA will promptly take appropriate remedial action.

Oregon VOC Regulations OAR 340-22-100 through -150, fall short of meeting RACT requirements for those VOC sources covered by CTGs which were issued by EPA prior to January, 1978.

a. *Gasoline Marketing—i. Deficiencies.* (1) OAR 340-20-100(9): The present definition of "delivery vessel" excludes the transfer of gasoline from terminals to bulk plants from vapor control requirements.

(2) OAR 340-22-110 and -115: The 90 percent vapor capture requirement has not been shown to be equivalent to a

vapor tight balancing system. This demonstration of equivalency or replacement of the 90 percent rule with an equipment specification rule requiring a vapor tight balancing system is needed.

(3) OAR 340-22-110(2)(C) and -115(5): Vapor capture requirements are conflicting. The exemption for vapor recovery provided in 340-22-110(c) should be made consistent with that provided in 340-22-115(5).

(4) OAR 340-22-115(5): Exempting delivery vessels and storage tanks at gasoline dispensing facilities from vapor capture requirements, where the source (gasoline dispensing facility) receives 250,000 gallons of gasoline or less per year from a bulk plant, has not been shown to be RACT. The State must either: (a) Demonstrate that exempting gasoline dispensing facilities and delivery vessels from vapor capture requirements is RACT so long as the gasoline is from a bulk gasoline plant and the dispensing facility receives no more than 250,000 gallons of gasoline or less per year, or (b) restrict the gasoline dispensing facility size cut-off exemption from 250,000 gallons per year to the recognized CTG exemption of 10,000 gallons per month.

(5) OAR 340-22-122(1): Permitted exceptions to the requirement for vapor capture during the filling of tank trucks at bulk gasoline terminals were not identified. The specified exceptions must be provided.

ii. *State Response.* The DEQ has committed to make the following changes to their gasoline marketing rules:

(1) The definition of "delivery vessel" will be changed so as to require vapor control (where previously excluded) in the transfer of gasoline from terminals to bulk plants.

(2) The conflict in vapor capture exemptions between OAR 340-20-110(2)(c) and OAR 340-20-115(5) will be eliminated by removing the language in -110(2)(c) from the rules.

(3) The 250,000 gallon per year exemption for service stations noted in deficiency (4) above will be reduced to 10,000 gallons per month.

(4) The permitted exceptions to vapor capture requirements referred to in OAR 340-22-122(1) will be clarified. Trucks switching from gasoline to diesel will be identified as the sole exemption.

(5) The vapor capture requirements in OAR 340-22-110 and -115 will be revised to require vapor tight capture systems.

ii. *Final Action.* EPA conditionally approves the gasoline marketing regulations provided that the State

makes those changes as discussed above.

b. *Cutback Asphalt—i. Deficiency.* OAR 340-22-125 contains no limitations on the use of solvents in emulsified asphalt. EPA has published a list of emulsified asphalt uses with corresponding maximum solvent contents. This guidance should be used in establishing limits on the addition of solvents to emulsified asphalt.

ii. *State Response.* The DEQ has committed to add limits, consistent with EPA guidance, to the amount of solvent which can be added to emulsified asphalts.

Final Action. EPA conditionally approves the asphalt rule provided that the State adds the above mentioned restrictions on solvent content of emulsified asphalts.

c. *Surface Coating—i. Deficiencies.* (1) OAR 340-22-140 does not specify that the term "coating line" includes the coater, flash-off area, and dryer.

(2) OAR 340-22-140 provides no documentation that the less restrictive emission requirements permitted for "inert gas process paper coating" are in fact RACT.

ii. *State Response.* The DEQ has committed to complete the following actions regarding surface coating rules:

(1) The term "coating line" will be defined so as to include the coater, flash-off area, and dryer.

(2) Documentation that the "inert gas process paper coating" rule is RACT will be submitted to EPA.

iii. *Final Action.* EPA conditionally approves the surface coating rule provided the State meets its above mentioned commitments regarding the definition of "coating line" and a demonstration of RACT for "inert gas process paper coating," or the State submits a revised surface coating regulation equivalent to RACT.

d. *Degreasers—i. Deficiencies.* (1) OAR 340-22-145: The cold cleaner rule fails to provide specific requirements for agitated solvents, heated solvents, and solvents with higher vapor pressures.

(2) OAR 340-22-146: The open top vapor degreaser rule does not require both a powered cover and specific freeboard ratio.

(3) OAR 340-22-147: The conveyerized degreaser rule does not require a major control device for those degreasers with an air/vapor interface greater than two square meters.

ii. *State Response.* The DEQ has committed to the following actions:

(1) Adding specific cold cleaner requirements for agitated solvents, heated solvents, and solvents with high vapor pressures.

(2) Changing the open top vapor degreaser rule to require both a powered cover and specific freeboard ratio.

(3) Requiring a major control device for conveyerized degreasers with an air/vapor interface greater than two square meters.

iii. *Final Action.* EPA conditionally approves the degreaser rules provided that the State completes the above three changes to rules for cold cleaners, open top vapor degreasers, and conveyerized degreasers.

e. *Source Test Procedures and Compliance Schedules.* Discussions are provided under "Other Rules/Regulations."

f. *Exemption of Methyl Chloroform and Methylene Chloride.* The Oregon regulations include exemptions for methyl chloroform and methylene chloride. The exemption is based on the fact that these compounds are photochemically unreactive and therefore do not play a significant role in ozone formation. Thus, the Oregon VOC regulation is approvable insofar as this exemption is concerned. However, both compounds may be subject to future regulation, not to meet the O₃ national ambient air quality standard (NAAQS), but because of evidence that they may be a direct health hazard. This possibility is stated here to put persons who may desire to take advantage of these exemptions on notice regarding the possibility of future control requirements for these compounds before conversion decisions are made.

3. Inspection and Maintenance (I/M)

"Inspection/Maintenance" (I/M) refers to a program whereby motor vehicles receive periodic inspections to assess the functioning of their exhaust emission control systems. Vehicles which have excessive emissions must then undergo mandatory maintenance. Generally, I/M programs include passenger cars, although other classes can be included as well. Enforcement can be accomplished by requiring proof of compliance to purchase license plates or before vehicle registration. In some cases, a windshield sticker system is used, much like many safety inspection programs.

Section 172 of the Clean Air Act requires that State Implementation Plans which include non-attainment areas must meet certain criteria. For areas which demonstrate that they will not be able to attain the ambient air quality standards for ozone or carbon monoxide by the end of 1982, despite the implementation of all reasonably available measures, an extension to 1987 is granted. The plan provisions shall "establish a specific schedule for

implementation of a vehicle emission control inspection and maintenance program * * *

EPA issued guidance on February 24, 1978, on the general criteria for SIP approval. Both of these items are part of the SIP guidance material referred to in the General Preamble for Proposed Rulemaking 44 FR 20372, 20373, n 6. Though the July 17, 1978, guidance should be consulted for details, the key elements for I/M SIP approval are as follows:

- **Legal Authority.** States or local governments must have adopted the necessary statutes, regulations, ordinances, etc., to establish the inspection/maintenance program. (Section 172(b)(10).)

- **Commitment.** The appropriate governmental unit(s) must be committed to implement and enforce the I/M program. (Section 172 (b)(10).)

- **Resources.** The necessary finances and resources to carry out the I/M program must be identified and committed. (Section 172(b)(7).)

- **Schedule.** A specific schedule to establish the I/M program must be included in the State Implementation Plan. (Section 172(b)(11)(B).) Interim milestones are specified in the July 17, 1978 memorandum in accordance with the general requirement of 40 CFR 51.13(c).

- **Program Effectiveness.** As set forth in the July 17, 1978 memo, the I/M program must achieve a 25% reduction in passenger car exhaust emissions of hydrocarbons and a 25% reduction for carbon monoxide. This reduction is measured by comparing the levels of emission projected to December 31, 1987, with and without the I/M program. This is not a specific requirement of the Act but is EPA's policy based on Section 172(b)(2) which states that "the plan provisions * * * shall * * * provide for the implementation of all reasonably available control measures * * *"

Specific detailed requirements of these five provisions are discussed below.

To be acceptable, I/M legal authority must be adequate to implement and enforce the program and must not be conditioned upon further legislative approval or any other substantial contingency. However, the legislation can delegate certain decision making to an appropriate regulatory body. For example, a state department of environmental protection or department of transportation may be charged with implementing the program, selecting the type of test procedure as well as the type of program to be used, and adopting all necessary rules and regulations. I/M legal authority must be

included with any plan revision which must include I/M (i.e., a plan which establishes an attainment date beyond December 31, 1982) unless an approved extension to certify legal authority is granted by EPA. The granting of such an extension, however, is an exceptional remedy to be utilized only when a State legislature has had no opportunity to consider enabling legislation.

Written evidence is also required to establish that appropriate governmental bodies are "committed to implement and enforce the appropriate elements of the plan." (Section 172(b)). When an I/M program is based on general enabling legislation, commitments must be made by all agencies involved in implementation or enforcement. Under Section 172(b)(7), supporting commitments for the necessary financial and manpower resources are also required.

A specific schedule to establish an inspection/maintenance program is required. (Section 172(b)(11)(B)). The July 17, 1978, memorandum established as EPA policy, seventeen key milestones for the implementation of an I/M program. These milestones were the general SIP requirements for compliance codified at 40 CFR 51.15(c). This section requires that increments of progress be incorporated for compliance schedules of over one year in length.

To be acceptable an I/M program must achieve the requisite 25% reductions in both hydrocarbon and carbon monoxide exhaust emissions from passenger cars by the end of calendar year 1987. While this specific requirement is not explicitly in the Act, the Act does mandate "Implementation of all reasonably available control as expeditiously as practicable." Section 172(b)(2). At the time of passage of the Clean Air Act Amendments of 1977, several inspection/maintenance programs were already operating at about a 20% stringency. (The stringency of a program is defined as the initial proportion of vehicles which would have failed the program's standards if the affected fleet had not undergone I/M before. Because some motorists tune their vehicles before I/M tests, the actual proportion of vehicles failing is usually a smaller number than the stringency of the programs).

A mandatory I/M program may be implemented as late as December 31, 1982 and the attainment date may be as late as December 31, 1987. Based on an implementation date of December 31, 1982 and a 20% stringency factor, EPA predicts the reductions of both CO and HC exhaust emissions of 25% can be achieved by December 31, 1987. Earlier implementation of I/M will produce

greater emission reductions. Thus, because of the Act's requirement for the implementation of all reasonably available control measures and because New Jersey and Arizona have effectively demonstrated practical operation of I/M programs with 20% stringency factors, it is EPA policy to use a 25% emission reduction as the criterion to determine compliance of the I/M portion with Section 172(b)(2).

I/M for Portland was authorized by the State legislature in 1973. The program was initiated in January 1974 on a voluntary basis and continued as such for 18 months. A centralized, state-operated biennial program became mandatory in mid-1975. With few exceptions, all gasoline powered vehicles must be inspected and meet emission standards if they are to be licensed. No waivers are provided for those automobiles requiring expensive repairs to meet the emission standards. A continuation of the present vehicle I/M program is a key element in both the O₃ and CO emission strategies for Portland; I/M is also a high priority alternative for other O₃ and CO attainment strategies in Oregon.

A key factor in evaluating the adequacy of the Portland I/M program was whether minimum emission reduction requirements would be met. More specifically, EPA questioned the ability of Portland's I/M program to demonstrate compliance with the 25% emission reduction requirement for CO and hydrocarbon emissions from passenger cars. The Portland I/M program requires inspection once every two years. Results from EPA's study of the Portland program indicates biennial inspection frequency provides less emission reduction than an annual program. However, EPA's analysis also predicts that the Portland I/M program will achieve at least a 25% CO and HC emission reduction by 1987. This optimistic prediction from a biennial program is due largely to the early initiation of I/M in Portland.

i. **Deficiency.** ORS Chapter 449 which included DEQ authority for the I/M program was approved by EPA in 1972. The approved SIP (40 CFR 52.1974) required submission of the regulations adopted pursuant to ORS Chapter 449. These regulations have not been submitted and approved by EPA. In addition, ORS Chapter 449 has been recodified and the motor vehicle inspection laws are now contained in ORS 468.360 to 468.420. In order to meet the requirements of § 51.11 of this chapter, the legal authority for the I/M program must be submitted by the State as part of its SIP revision.

ii. *State Response.* The DEQ has submitted the recodified portions of ORS 449. The statutes are numbered ORS 468.360 through 468.420, 481.190, 481.200, 483.800, 483.805, 483.820, and 483.825. A public hearing on the operating regulations for the I/M program is scheduled for May 19, 20, and 21, 1980. The subject regulations are OAR 340-24-005 through 340-24-350, with revisions to Section -305, -320, -330, and -335. Upon approval by the Environmental Quality Commission during its June 20, 1980 meeting, the regulations will be submitted to EPA by early July. As further background, DEQ noted that it had submitted operating regulations for the I/M program to EPA in 1976, 1977, and again in 1978. EPA had expressed doubt that these submittals met the procedural requirements set out in § 51.4 of this chapter and therefore these submittals were withdrawn and DEQ agreed to resubmit all regulations and statutes applicable to the Oregon program as soon as practicable.

iii. *Final Action.* EPA conditionally approves Portland's I/M program provided that the State submits its operating regulations to EPA by July 15, 1980.

4. Other Rules/Regulations

a. *Source Test Procedures.* To maintain SIP enforceability, source test procedures for each emission limitation must be included in the SIP, or the SIP must contain specific reference to a properly identified source test method which is submitted for the record along with the SIP. The reference would normally include the title, number (if the method is coded), and the date of the appropriate version of the method(s).

Oregon's SIP does not contain source test procedures but does refer to specific methods on file. Many of these procedures have been approved by EPA. Further, the SIP references to specific source test procedures do not include dates for the methods (as required above). However, EPA considers the approval date of this Part D revision as the date of these source test procedures. Any significant modification to the procedures, if they are to be Federally enforceable, will have to be adopted and submitted to EPA for approval.

i. *Deficiency.* VOC source test methods have not been submitted by the State for EPA approval.

ii. *State Response.* The DEQ has committed to submit the VOC source test procedures.

iii. *Final Action.* EPA further conditions the approval of VOC rules pursuant to the State submitting approvable source test procedures.

b. *Compliance Schedules.* All sources subject to the new Part D emission regulations must have compliance schedules. These schedules are to meet the requirements of 40 CFR 51.15 and 51.1(q), and should be submitted for approval along with the Part D revisions.

i. *Deficiency.* Although the subject SIP revisions contain final compliance dates for sources subject to the Oregon VOC rules (OAR 340-22-100 through -150), required increments of progress, as required by 40 CFR 51.15, were omitted. The public participation requirements found in 40 CFR 51.4 are also applicable and must be satisfied prior to adoption of the subject schedules by the State.

ii. *State Response.* VOC rules will be revised to incorporate categorical compliance schedules, including increments of progress.

iii. *Final Action.* EPA also conditions the approval of VOC rules subject to the State submitting formally adopted compliance schedules for VOC sources.

c. *Continuity of Regulations.* The measures approved or conditionally approved are in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations remain applicable and enforceable to prevent a source from operating without controls or under less stringent controls, while moving toward compliance with the new regulations (or, if it chooses, challenging the new regulations). Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, which may include assessment of non-compliance penalties.

There are two main exceptions to this rule. First, if a pre-existing control requirement is incompatible with a new, more stringent requirement, the State may exempt sources from compliance with the pre-existing regulations during the period when compliance with the existing requirement conflicts with achieving compliance with the new requirement. Any exemption granted would be reviewed and acted on by EPA as a SIP revision; decisions would be made on a case-by-case basis. Second, an existing requirement can be relaxed or revoked if the revision will not interfere with attainment of standards.

d. *Attainment Dates and Compliance Deadlines.* The 1978 edition of 40 CFR Part 52 lists in the subpart for Oregon the applicable deadlines for attaining ambient standards (attainment dates) required by Section 110(a)(2)(A) of the Act. For each non-attainment area where a revised plan provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on Oregon's

attainment date chart in 40 CFR Part 52. The earlier attainment dates under Section 110(a)(2)(A) will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements more time to comply with those requirements.

As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe Part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D. (123 Cong. Rec. H 11958, daily ed. November 1, 1977).

To implement Congress intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date has been approved. The two exceptions to this rule are noted in the above discussion under "Continuity of Regulations."

e. *Director's Discretion.* Many SIPs contain provisions which allow one or more State air pollution officials, at their discretion or under specified conditions, to grant certain changes or exemptions to SIP requirements. These State actions may be described as variances, equivalency determinations, orders, extensions, exemptions, exceptions, suspensions or something similar. For example, a SIP may specify that the installation and proper use of a certain type of control equipment is required, unless the director of the State agency,

after fulfilling some procedural or substantive criteria, determines that another type of control equipment is equivalent to that specified. An additional example is a SIP provision which allows an exemption from the generally applicable emission limitation when conforming fuel is unavailable due to emergency circumstances. The most general type of discretionary authority provision in a SIP specifies that any source may apply for a variance from the applicable requirements and that a State agency official may grant such a request if certain procedural and substantive criteria are met.

At the request of the State involved, EPA has approved these procedures as part of the SIP. In some cases, the EPA approval has stated explicitly that State actions under the approved procedures must be submitted separately as SIP revisions in order to become part of the Federally approved, Federally enforceable SIP. In some other cases, EPA's approval has not addressed the question of whether separate submittals are required. The Agency wishes to clarify the effect of its approval of the procedures in order to distinguish the procedures themselves from specific actions taken in accordance with those procedures.

Any specific action taken by a State official, even if authorized under procedures approved by EPA, does not modify the Federally approved SIP unless submitted to and approved by EPA as a separate revision to the SIP. (See 40 CFR 51.6(c)) Under 40 CFR 51.8, such SIP modifications do not replace EPA approved SIP provisions unless approved case-by-case by EPA as meeting the requirements of Section 110 of the Act and 40 CFR Part 51. Thus, while EPA may approve the procedures a State employs to modify the SIP, it does not thereby approve individual actions which may be taken under these procedures.

Section 110 of the Act imposes on the EPA Administrator a duty to exercise his independent judgment that a State Implementation Plan submittal is adequate to assure attainment and maintenance of the national ambient air quality standards. The Act and EPA regulations allow the States great flexibility to develop individually tailored approaches to air pollution control; however, the Administrator cannot fail to exercise his independent judgment on any SIP submitted for his approval. Provisions in SIP submittals which are essentially procedural or which allow the exercise of State discretion on substantive matters, such as emission limitation requirements,

cannot be adequately evaluated since their effect on air quality cannot be determined until specific action is taken. Rather than disapprove them in all cases, EPA may approve such provisions where they are not otherwise disapprovable under Section 110. However, the air quality impacts of actions taken under these provisions must be evaluated by the Administrator before they can be recognized under Federal law.

It is not EPA's intention, however, that minor changes effected by a State official which do not change the substantive requirements applicable to one or more sources should be submitted as SIP revisions. Thus, the relocation of an ambient air quality monitor in accordance with Federal guidelines, for example, would not need to be reviewed for compliance with the Act.

State construction permits which have been issued in accordance with SIP procedures approved by EPA as satisfying 40 CFR 51.18 and which satisfy the Emission Offset Interpretative Ruling, Part D of the Act, or EPA's prevention of significant deterioration regulations, are enforceable by EPA and do not require case-by-case approval by EPA. See 44 FR 3274, January 16, 1979; and 40 CFR 52.21 and proposed changes at 44 FR 51924, September 5, 1979.

f. Ambient Air Quality Monitoring. EPA has several concerns with respect to monitoring for ozone and its precursors in the non-attainment areas. However, it is felt that the ongoing formal revisions to ambient air quality monitoring networks and further EPA guidance/requirements on data collection for the 1982 ozone SIP submittals will adequately address these issues.

B. Non-Attainment Area Plans

The non-attainment area plans are discussed in groups categorized by pollutant. Each discussion will provide: (1) A background statement, (2) the emission reductions required, (3) control measures (4) deficiencies, (5) State and or local response, (6) public comments, and (7) final action. Attainment date extension requests are discussed for those areas unable to attain CO and or O₃ standards by the end of 1982.

1. Extension Requests:

Under Section 172(a)(2) of the Act, the State has requested an extension of the attainment for CO and or O₃ in the following areas: Portland (CO and O₃), Eugene (CO) and Medford (CO). To document the need for these extensions, the State submitted a demonstration

that attainment by 1982 cannot be achieved for these areas despite implementation of all reasonably available control measures. Thus, EPA is approving these post-1982 attainment date extension requests.

For those areas receiving attainment date extensions for CO and or O₃, SIP development may take place in two stages. The first, which is addressed in this rulemaking, involves a commitment to evaluate and adopt control measures which will result in predicted attainment not later than December 31, 1987. The second stage, requires completion of a control strategy by July 1, 1982, with identification of an earliest practicable attainment date being not later than December 31, 1987.

2. Carbon Monoxide:

a. Portland.—(1) Background. The Portland CO non-attainment area is the Oregon portion of the Portland, Oregon-Vancouver, Washington AQMA non-attainment area. The 1970 census figures show the Portland standard metropolitan statistical area (SMSA) with a population of approximately 750,000. Four different monitoring sites have shown numerous violations during each year of operation (earliest site dates back to 1970). A screenline computer modeling technique indicates that much of the central business district, adjacent areas on the east side of the Willamette River, and additional heavily trafficked corridors are now in violation of the standard. Although violations are widespread throughout the area, the frequency of exceeding the 8-hour standard has been reduced significantly since 1971. The one-hour standard has not been exceeded at any site since 1971.

This problem has been attributed almost entirely to emissions from transportation sources. The emission inventory for 1977 shows a total of 779,000 tons per day (tpy) of CO being emitted, of which 97 percent originates from motor vehicles.

The designated lead agency for development of a CO plan is the Metropolitan Service District (MSD). Former Governor Straub originally designated the Columbia Regional Association of Governments as lead agency. However, the designation was shifted to a reorganized MSD after the Columbia Regional Association of Governments was abolished. The MSD has been working in close cooperation with the DEQ on the CO plan revision.

(2) Emission Reduction Required. Computer modeling predicts by the end of 1982, only a few streets in the central business district and one street in a suburb southwest of Portland will be

violating the 8-hour standard. By the end of 1987, all streets are predicted to be in compliance.

Since attainment by the statutory December 31, 1982 date is not projected, a formal request for a post-1982 attainment date has been made by Oregon pursuant to Section 172(a)(2) of the Act.

A design value of 17.4 mg/m³ was used to determine the emission reduction required. This value was derived from measured ambient air quality data.

(3) *Control Strategy*. In light of the dominant motor vehicle contribution to the CO non-attainment problem, the control strategy focuses on transportation measures. It should be noted that measures designed to reduce vehicle emissions work in one of two ways: (a) By reducing vehicle trips and miles traveled; i.e., improved mass transit carpooling, etc., or (b) by reducing the emissions from individual vehicles; i.e., inspection and maintenance, traffic flow improvements, etc. The Federal Motor Vehicle Control Program (FMVCP) falls into the latter category. Other control measures identified in the Portland CO plan fall into both of the above categories.

Measures already implemented, and, in some cases scheduled for further improvements over the near term, include:

- a. Inspection and maintenance (see preceding discussion on this topic);
- b. Improve public transit;
- c. Exclusive bus and carpool lanes;
- d. Area-wide carpool programs;
- e. Long-range transit improvements;
- f. Parking controls;
- g. Park-and-ride lots;
- h. Pedestrian malls;
- i. Employer programs to encourage carpooling and vanpooling;
- j. Traffic flow improvements;
- k. Bicycle program;
- l. Urban development policies to reduce vehicle miles travel (VMT).

Additional measures considered high priority for obtaining further emission reductions are listed below:

- (a) Inspection and maintenance on annual basis;
- (b) Additional public transit improvements;
- (c) Expanded carpool programs;
- (d) Additional long-range transit improvements;
- (e) Parking restrictions;
- (f) Additional park-and-ride lots;
- (g) Additional employer programs to encourage carpooling, vanpooling, mass transit, etc.;
- (h) Traffic flow improvements.

(4) *Deficiencies*—(a) *Beaverton Park and Ride*. The inclusion of a project in the Annual Element of the

Transportation Improvement Program is not an adequate commitment. Before the final approval of the SIP, EPA needs a letter from Oregon Department of Transportation (ODOT) indicating a commitment to fund the project and a schedule for start of construction.

(b) *Expanded Bus Service on I-5 Corridor*. The submission does not contain an adequate description of this project. Before the final approval of the SIP, EPA needs a letter from the transit authority describing the project, a schedule for implementation, and a funding commitment.

(c) *Traffic Flow Improvements*. The SIP does not contain a detailed list of traffic flow improvements which will improve air quality. Before final approval of the SIP, ODOT must identify specific projects and commit to their implementation.

(d) *Carpool Project*. The SIP does not contain a commitment to fund this project after June, 1980. Before final approval, a letter containing a commitment to fund this project from the appropriate agency is necessary.

(e) *Emissions Inventory*. The emissions inventory should be revised to include emissions from parking activities (parking lots and on-street parking). EPA expects that this will be completed during 1980 along with the alternatives analysis. This problem is not serious enough to be considered a deficiency and thus does not warrant conditioning the approval of the SIP.

(5) *State/Local Response*. (a) Letters submitted by the ODOT and the local Tri-County Metropolitan Transportation District in response to published deficiencies adequately address EPA's concerns.

(b) The DEQ has indicated that parking lot emissions are to be included in the July 1980 submittal of an alternatives analysis.

(6) *Final Action*. EPA approves this stage of development of the Portland AQMA CO attainment plan as all conditions identified in the notice of proposed rulemaking (45 FR 3929) have been met.

b. *Eugene-Springfield AQMA*—(1) *Background*. The non-attainment area boundaries are the same as those for the air quality program in Eugene-Springfield as it relates to both stationary source and transportation planning. Population of the area is substantially less than 200,000.

The lead agency responsible for development of a CO plan is the Lane Council of Governments, designated by former Governor Straub in accordance with requirements of Section 174 of the Act.

The only CO monitor in the area was installed in Eugene in mid-1975.

Violations of the 8-hour CO standard have been recorded during each of the first four years of operation. Two violations were measured in 1975, eleven in 1976, seven in 1977, one in 1978, but no violations in 1979 or the first quarter of 1980. Although modeling indicates that Eugene-Springfield will not attain CO standards until the end of 1985, measured ambient air quality data indicates that the area may in fact be attaining CO NAAQS at this time.

This air quality problem can be attributed almost solely to motor vehicle emissions. The 1977 emissions inventory (EI) shows that motor vehicles account for 58,000 tons per year (tpy) of CO emissions or approximately 95 percent of the total EI. Other sources of CO were calculated to have a negligible impact on air quality.

(2) *Emission Reduction Required*. A CO forecast model was used to determine the extent of the non-attainment problem assuming "worst case" meteorological conditions. Approximately 10 kilometers of roadway, located primarily in the Eugene central business district, were identified as having had the potential to violate NAAQS in 1977. This is predicted to be reduced to two kilometers of roadway by 1983 and attainment by 1985. Thus, only marginal non-attainment is predicted by the end of 1982. By taking credit for emission reductions from the FMVCP and emission reduction strategies already implemented, total CO emissions in the metropolitan area are expected to decrease 18 percent between 1977 and 1983. Reductions between 1977 and 1987 are predicted to be 32 percent. Although vehicle miles traveled will be increasing during this period, these increases will be more than offset by the control measures so that attainment by 1985 is predicted.

Because of this projected attainment date, a formal request for an extension (attainment later than 1982) was made pursuant to Section 172(a)(2) of the Act.

A design value of 12.7 mg/m³ was used to determine the emission reductions required. This value was derived from measured ambient air quality data.

(3) *Control Strategy*. As the non-attainment problem is almost entirely motor vehicular in origin, the control strategy is restricted to transportation measures. It should be noted that measures designed to reduce motor vehicle CO emission work in one of two ways: (a) By reducing vehicle usage; i.e., improved mass transit, carpooling, etc., or (b) by reducing the emissions from

individual vehicles; i.e., inspection and maintenance, traffic flow improvements, etc. The FMVCP, an integral part of the control strategy, falls in the latter category of measures. Additional improvements are expected from measures which encompass both of the above categories.

Besides the FMVCP, emission reduction measures being implemented include the following:

- (1) Traffic engineering improvements;
- (2) Bikeways;
- (3) Transit development and improvement;
- (4) Pedestrian mall;
- (5) Staggered work hours;
- (6) Traffic flow improvement.

EPA feels that the State has submitted an adequate control strategy for this area. Numerous control measures beyond the FMVCP have been adopted and implemented. Further, 1970 census figures show a combined population for the two cities to be 105,000, thus absolving the lead agency from requiring I/M. EPA is satisfied that all reasonably available control measures have been adopted and are being implemented. Thus, no alternatives analysis or further control strategy development is being required at this time.

(4) *Deficiencies.* The emissions inventory does not include emissions from parking activities (parking lots and on-street parking). This omission is not serious enough to be considered a deficiency and thus does not warrant conditioning the approval of the CO control strategy.

(5) *State Response.* The DEQ has identified an agreement between itself and the Lane Council of Governments (lead agency for developing a CO attainment plan for this area) wherein the latter will provide information on CO emissions from parking activities in their emission inventory.

(6) *Final Action.* EPA approves the Eugene-Springfield AQMA CO attainment plan.

c. Salem—(1) *Background.* The official CO non-attainment designation for Salem included that area within the city limits. However, Mid-Willamette Valley Council of Governments (MWVCOG), the designated lead agency, expanded the "official" non-attainment area to include that area described by the Salem Area Transportation Study (SATS) boundaries.

This larger area, 124 square miles versus 32 square miles for the "official" non-attainment area, provides more appropriate coverage of the demographic and geographic Salem urban area and thus represents a more reasonable study area. Neither area, however, exceeds the 200,000 population

cutoff used to define the difference between urban and rural non-attainment areas.

As defined by air quality data, the non-attainment problem is relatively marginal. A single monitor located in downtown Salem annually recorded no more than six violations of the 10 mg/m³ 8-hour standard during the four year period of 1974 through 1977.

For all practical purposes, the entire contribution to the CO non-attainment problem is from motor vehicle emissions. The emission inventory shows that 52,250 tpy of CO originated from mobile sources (over 99 percent) while only 196 tons per year were attributed to stationary (area) sources.

(2) *Emissions Reduction Required.* Computer modeling shows that as base year 1977, 2.2 miles of roadway in the urban area were violating the 8-hour CO standard. By the end of 1982, marginal compliance is predicted from emission reductions to be obtained from the FMVCP. This reduction is expected to be 12,000 tpy.

A design value of 11.4 mg/m³ was used to determine the emission reductions required. This value was derived from measured ambient air quality data.

(3) *Control Strategy.* Because of the dominant role of motor vehicular emissions, the CO control strategy is limited to transportation measures. In fact, the attainment plan takes credit for only the FMVCP in demonstrating attainment by the end of 1982.

However, 9 of the 14 EPA recommended reasonably available control measures are either already implemented or committed for implementation.

These measures, listed below, have not been accounted for in the control strategy and should result in measurable further improvement in CO levels:

- (1) Carpool program;
- (2) Express bus/park and ride program;
- (3) Bicycle plan;
- (4) Transit fleet expansion;
- (5) Private car restrictions;
- (6) On-street parking limitations;
- (7) Staggered work hours;
- (8) Pedestrian malls;
- (9) Traffic flow improvements.

(4) *Deficiencies.* (a) Modeling errors were noted in the vehicles miles traveled (VMT) growth rate curve. VMT growth rate was derived from population projections. However, the 1977 baseline population figures were found to be in error (too high). This resulted in identifying an emission reduction somewhat smaller than that actually needed. Consequently, Salem's

ability to attain standards by the end of 1982 was questioned.

(b) The emission inventory does not include emissions from parking activities (parking lots and on-street parking). This omission is not serious enough to be considered a deficiency and does not warrant conditioning the approval of the CO control strategy.

(5) *State Response.* (a) The DEQ corrected for errors in the baseline population figures and re-ran their analysis. Projected 1982 CO concentrations remained below the ambient standard.

(b) The Department stated that, in its opinion, the existing emission inventory in the model adequately accounts for parking lot emissions.

(6) *Final Action.* EPA approves the Salem CO attainment plan. The area is substantially below 200,000 population and corrected modeling results project attainment of the ambient CO standard by the end of 1982.

d. *Medford-Ashland AQMA*—(1) *Background.* The non-attainment area is defined by the AQMA boundaries which encompass the towns of Medford, Ashland, White City, and Eagle Point. Ambient air quality data from this area is limited but, nonetheless, conclusive. A single CO monitor located in downtown Medford has provided data only since 1977. However, numerous violations of the 8-hour standard have been recorded each year with 8-hour concentrations as high as 22 mg/m³. The one-hour standard has never been exceeded. Modeling has shown that an estimated 20 miles of roadway violated the 8-hour standard in 1977.

The base year 1977 CO emission inventory for the AQMA shows that approximately 83 percent of the 59,500 tons per year inventoried originated from motor vehicles.

Lead agency for development of CO attainment plan is the Jackson County Board of Commissioners. This group has worked closely with the DEQ and the very active citizens advisory committee to develop attainment plans for this area.

(2) *Emission Reduction Required.* Modeling has shown that an estimated 72 percent decrease in CO emissions would be required to attain the 8-hour standard. This problem has been compounded by a lack of traditional transportation planning due to the low population of this area (Medford, the largest town, has a 1970 census population of 28,500). However, the Jackson County Planning Department, lead agency for transportation related air quality planning, is presently developing a needed transportation control plan (TCP). Without this TCP,

modeling predicts that the 20 miles of non-attainment roadway estimated for 1977 is predicted to only decrease to 16 miles by 1982 with 12 miles still violating standards by 1987.

A design value of 19.8 mg/m³ was used to determine the emission reductions required. This value was derived from measured ambient air quality data.

(3) *Control Strategy.* Since motor vehicle emissions are the prime culprit for the non-attainment problem, the control strategy needs to focus on transportation measures. However, the only existing control measure for this area is the Federal Motor Vehicle Control Plan, accounting for the above predictions of continued non-attainment. As a result, an attainment date extension request was submitted pursuant to Section 172(a)(2) of the Act. In light of this air quality problem, Jackson County has committed to evaluate reasonably available control measures by July 30, 1980, and develop and officially submit to EPA a control strategy under the Governor's signature by June 30, 1982. This strategy is to contain those measures necessary to attain the CO standard as expeditiously as practicable but no later than December 31, 1987. Those measures which appear most likely to be adopted are:

- (a) I/M;
 - (b) Parking and traffic circulation plan;
 - (c) Improved bicycle and transportation networks;
 - (d) Disincentives to private auto use;
 - (e) Ban on open burning.
- (4) *Deficiencies.* The emissions inventory does not include emissions from parking activities (parking lots and on-street parking). This omission is not considered serious enough to warrant conditioning the approval of the CO control strategy.

(5) *State Response.* The DEQ, in correspondence with the lead agency, has indicated that emissions from parking activities will be provided with the alternatives analysis being performed for this area.

(6) *Final Action.* EPA approves this stage of development of the CO attainment plan for the Medford-Ashland AQMA.

3. Ozone

Each of the ozone (O₃) non-attainment areas is also non-attainment for CO. However, unlike CO, ambient O₃ concentrations are generally not related to direct emissions to the atmosphere but are formed by complex reactions between VOC and oxides of nitrogen in the presence of sunlight. Attainment

strategies focus primarily on reducing hydrocarbon emissions and rely on both mobile source control programs and emissions reductions from stationary sources. Mobile source plans were discussed in the CO presentation and stationary source hydrocarbon controls were outlined in the VOC section. Further, the non-attainment area boundaries and designated lead agencies for O₃ are the same as for each corresponding CO plan. Thus, the following discussion of area specific O₃ plans will be brief.

a. *Portland—(1) Background.* Four monitors in the area, installed between 1974 and 1976, have shown the 0.12 ppm O₃ standard to be exceeded each year, with the highest concentration for any year being 0.23 ppm (451 ug/m³) in 1977. The 1977 base year emission inventory shows a total of 111,000 tons of VOC being emitted of which 65 percent are attributed to mobile sources.

(2) *Emissions Reduction Required.* The EPA city specific isopleth version of EKMA was used to identify needed emission reductions. In order to attain the 0.12 ppm standard, a 50 percent reduction in 1977 VOC emissions must be obtained. However, through implementation of all reasonably available control measures, only a 37 percent reduction is projected by the end of 1982. Thus, the State has requested, pursuant to Section 172(a)(2) of the Act, a post-1982 attainment date for O₃.

A design value of 0.183 ppm (365 ug/m³) was used to determine the emission reductions required. This value was derived from measured ambient air quality data.

(3) *Control Strategy.* See the VOC discussion under "General Regulations" and the Portland CO control strategy.

(4) *Deficiencies.* (a) VOC Rules—Discussed by source category under "General Regulations, Volatile Organic Compounds."

(b) I/M Program—As discussed earlier, operating regulations necessary to implement the program have not been officially submitted in accordance with procedural requirements.

(c) Ambient Air Quality Monitoring—Concerns are not serious enough to warrant conditioning the approval of the O₃ control strategy (subject discussed in greater detail under "Other Regulations").

(5) *State/Local Response.* Those responses discussed for Portland CO and VOC rules also apply here.

(6) *Final Action.* EPA conditionally approves this stage of development of the O₃ attainment plan for the Portland non-attainment area provided that the conditions for approval of the VOC rules

are met, and provided that the State submits its I/M operating regulations to EPA by July 15, 1980.

b. *Eugene-Springfield AQMA.* A reassessment of air quality data after the federal standard was raised from 160 ug/m³ (0.08 ppm) to 235 ug/m³ (0.12 ppm) revealed no recorded violations of the new standard in the Eugene-Springfield AQMA. Thus, on March 2, 1979, the State requested that the area be redesignated from "non-attainment" to "attainment." EPA redesignated this area to "attainment/unclassifiable" in the January 10, 1980 Federal Register (45 FR 2044).

c. *Salem—(1) Background.* A single monitor operating in the area since 1975 has revealed a marginal non-attainment problem. No more than three days with violations of the standard have been noted for each of the past four years (1975 through 1978). During this four year period, the highest value recorded was 0.167 ppm (328 ug/m³ versus 0.12 ppm or 235 ug/m³ for the standard), occurring in 1977. The 1977 base year emission inventory shows a total of 8,210 tons of VOC being emitted of which 89 percent are attributed to mobile sources.

Salem's O₃ concentrations appear to be significantly impacted by emissions from Portland, a major urban area located approximately 40 miles north of Salem. Since Salem is technically defined as a "rural" (less than 200,000 population) O₃ non-attainment area and is impacted by emissions from an urban area, EPA's rural O₃ policy may be applied. Rather than requiring a specific control strategy for each rural non-attainment area, this rural policy requires RACT on VOC sources, lowest achievable emission rate (LAER) for new major stationary sources, and an approvable control strategy for major urban areas (Portland). These requirements are met for Salem in the subject Part D SIP revision except as noted in Deficiencies on the VOC rules.

(2) *Emission Reduction Required.* The EPA standard isopleth EKMA model was used and predicted that a 12 percent or 985 tons per year reduction in VOC emissions is needed to reduce base year design concentrations to under the 0.12 ppm standard.

A design value of 0.151 ppm (305 ug/m³) was used to determine the emission reductions required. This value was derived from measured ambient air quality data.

(3) *Control Strategy.* Stationary source VOC regulations and the FMVCP are predicted to result in 27 percent or 2243 tons per year reduction by the end of 1982. Since only a 985 tons per year reduction has been shown as being

necessary for attaining the standard, the projected reduction is more than that needed to bring the area into attainment.

(4) *Deficiencies*—a. *Strategy*—The ozone control strategy, as submitted, did not adequately account for the impact of emissions from Portland. However, EPA has recommended that the control strategy identify reliance on the rural O_3 policy. The alternative involves revising the present modeling approach to adequately account for the influence of emissions from sources in Portland.

b. *VOC Rules*—Discussed by source category under "GENERAL REGULATIONS, VOLATILE ORGANIC COMPOUNDS."

(5) *State Response*. The DEQ has submitted a commitment to revise its existing strategy to rely on the rural O_3 policy.

(6) *Final Action*. EPA conditionally approves the O_3 control strategy for Salem provided that the conditions for approval of the VOC rules are met.

d. *Medford-Ashland AQMA*—(1) *Background*. A single monitor installed in 1976 has shown up to seven days with violations of the Federal standard for each of three consecutive years (1976 through 1978). The highest one hour concentration recorded during this period was 0.18 ppm (384 $\mu\text{g}/\text{m}^3$). Base year (1977) emissions inventory figures show a total of 13,100 tons of VOC per year being emitted with approximately 44 percent attributed to motor vehicles.

(2) *Emission Reductions Required*. The EPA approved EKMA model identifies the need for a 13 percent or 1700 tons per year reduction in total VOC emissions in order to meet the Federal standard.

A design value of 0.15 ppm (294 $\mu\text{g}/\text{m}^3$) was used to determine the emission reductions required. This value was derived from measured ambient air quality data.

(3) *Control Strategy*. Modeling efforts predict reductions in VOC emissions between 1977-1982 from the FMVCP, the stationary source VOC rules, and the particulate control strategy will total approximately 2200 tpy. This amounts to a 17 percent decrease, of which 12 percent originates from the FMVCP, four percent from stationary source VOC control, and one percent from special particulate rules. This projected decrease is substantially more than that shown to be needed for attainment.

Although Medford qualified, technically, as a "rural" O_3 non-attainment area (concept discussed under Salem, *Background*), EPA is strongly supportive of the on-going development of a specific attainment strategy for this area. Unlike Salem,

whose O_3 problem appears to be significantly influenced by emissions from Portland, Medford's O_3 concentrations do not appear to be measurably impacted by emissions from a major urban area. Thus, reliance on EPA's rural O_3 policy, as is recommended for Salem, is considered inappropriate for Medford.

(4) *Deficiencies*. VOC Rules—Discussed by source category under "GENERAL REGULATIONS, VOLATILE ORGANIC COMPOUNDS."

(5) *State Response*. Discussed under VOC rules.

(6) *Final Action*. EPA conditionally approves the O_3 control strategy for the Medford-Ashland AQMA provided that the conditions for approval of the VOC rules are met.

4. Total Suspended Particulate (TSP)

Although Portland, Eugene-Springfield, and Medford were designated non-attainment for TSP, no Part D plans are due at this time. This is attributable to (a) recent redesignations of the Medford and Eugene-Springfield areas and (b) 18-month extensions for submittal of secondary standard attainment plans. Extensions until July 1980 for all secondary standard SIPs were formally requested by the State on March 2, 1979, and were granted in the July 30, 1979 *Federal Register* (44 FR 44497) pursuant to 40 CFR 51.31. Further, on January 10, 1980 (45 FR 2044), the Medford TSP designation was changed from non-attainment of secondary standards to non-attainment of primary standards; a new due date of October 10, 1980 was identified for this TSP SIP revision. The Eugene-Springfield TSP designation was changed from non-attainment of primary standards to non-attainment of secondary standards in this same *Federal Register*.

Although no TSP attainment strategies have been submitted, the State has adopted and submitted revised rules for stationary sources of TSP in Medford. EPA is not taking final action on these revised rules in this rulemaking. However, because these rules will serve as the nucleus for the Medford-Ashland TSP attainment strategies which are now being developed by the State, EPA is providing comment on the revised TSP stationary source rules at this time.

a. *Portland*. The Portland portion of the Portland, Oregon—Vancouver, Washington AQMA was designated non-attainment for secondary standards only. Thus, with the above 18-month extension, no plan is due until July 1, 1980 and no EPA action is being taken at this time regarding plan approval.

b. *Eugene-Springfield*. The area was initially designated non-attainment for

both primary and secondary standards. However, only one monitor in the network (Springfield City Shops site) showed non-attainment of the primary standards. The representativeness of data from this monitor had been a subject of controversy for several years. It had been the State's recommendation that data from this monitor should not be considered in making attainment/non-attainment determinations because its location is such that measured TSP levels reflect the air quality of only a very small area surrounding the monitor. Justification provided by the State for discounting this data has recently been accepted by EPA Region 10. A notice of final rulemaking to redesignate the area from non-attainment for primary standards to non-attainment for secondary standards only was published in the *Federal Register* on January 10, 1980 (45 FR 2044); additional details surrounding the redesignation can also be found in that publication. The above redesignation removed the obligation for State submittal of a TSP primary standard attainment plan. The TSP secondary standard attainment plan is due July 1, 1980. Thus, no EPA action is being taken at this time regarding TSP plan approval for the Eugene-Springfield AQMA.

c. *Medford-Ashland*. The Medford-Ashland AQMA was initially designated non-attainment for secondary standards only. However, subsequent TSP data revealed an air quality problem which was found to be much worse than at first recognized; more recent concentrations well above the primary standard have been recorded. As a result, the area was redesignated to non-attainment of primary standards in the January 10, 1980 *Federal Register* (45 FR 2044). Since the redesignation involved changing to a more restrictive classification, EPA has given the State nine months from the date of final action (until October 10, 1980) to submit a primary standard non-attainment strategy; the due date for submittal of a secondary standard attainment plan remains July 1, 1980. Additional details surrounding the redesignation can be found in the January 10, 1980 *Federal Register* notice.

As already stated, EPA is not taking final action in this rulemaking on revised TSP rules for stationary sources which were submitted by the State of Oregon. However, since Oregon submitted these rules as representing at least RACT, and because these rules will serve as the basis for the Medford-Ashland attainment strategies which are now being developed, EPA has reviewed

the subject rules and identified several deficiencies.

Deficiencies: (1) Rule 340-30-035: Specific conditions under which the Director may lift the ban on operation of wigwam waste burners are not provided.

(2) Rules 340-30-015, -030, and -040: Annual averaging times for emission regulations are unacceptable in that they make compliance determinations extremely difficult.

State Response. The DEQ has made the following commitments/arguments regarding the above noted deficiencies:

(1) Specific conditions under which the Director may lift the prohibition or wigwam burner operation will be provided.

(2) Existing visible emission rules can be used for an immediate determination of source compliance for those sources covered by an annual emission regulation.

(3) Existing 40 percent opacity requirements applicable to hogged fuel boilers will be changed to a 20 percent regulation.

(4) The annual average limitations can permit compliance assessments more often than once per year. For two of the three source categories covered by an annual average emission regulation, only one test per year is required to demonstrate compliance. However, if this test result shows a violation of the annual emission regulation, then three additional tests shall be required during the year with no single test result allowed to be more than twice the annual average emission limitation. For one of the three source categories covered by an annual average emission regulation, only one test per year is called for in the source test regulation. However, this test must show compliance or the source is in violation.

EPA will take rulemaking action on the revised TSP rules for stationary sources when the completed TSP attainment plans are submitted. At this time, EPA suggests that these rules be modified so that:

(1) Conditions under which the Director can lift the prohibition on wigwam waste burner operation are identified, and

(2) A visible emission rule that restricts plume opacity to 20 percent or less for hogged fuel boilers with a heat input greater than 35 million BTU/hr is adopted.

EPA feels that the specific provisions of the annual average emission limitations will permit adequate enforcement of those rules.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the

procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

(Sec. 110(a), 172, Clean Air Act (43 U.S.C. 7410(a) and 7502))

Dated: June 16, 1980.

Douglas M. Costle,
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows.

Subpart MM—Oregon

1. In § 52.1970, paragraphs (c)(26)–(c)(30) area added as follows:

§ 52.1970 Identification of plan.

(c) * * *

(26) On June 20 and 29, 1979, the Governor submitted: (a) carbon monoxide (CO) and ozone (O₃) attainment plans for the Oregon portion of the Portland-Vancouver AQMA, Salem, and Medford-Ashland AQMA, and (b) a carbon monoxide (CO) attainment plan for the Eugene-Springfield AQMA.

(27) On June 20, 1979, the Governor requested an extension beyond 1982 for the attainment of carbon monoxide (CO) in Portland, Eugene-Springfield and Medford.

(28) On June 29, 1979, the Governor requested an extension beyond 1982 for the attainment of ozone (O₃) in Portland.

(29) On February 14, 1980, the State Department of Environmental Quality submitted its official response to EPA's proposed SIP actions which were published in the *Federal Register* on January 21, 1980 (45 FR 3929).

(30) On May 6, 1980, the State Department of Environmental Quality submitted recodified portions of Oregon

Revised Statutes (ORS) 449 which authorize Oregon's automobile inspection/maintenance program. This submittal, requested by EPA, included chapters ORS 468.360 through 468.420, 481.190, 481.200, 483.800, 483.820, and 483.825.

§ 52.1971 [Amended]

2. Section 52.1971 is amended by changing the heading "photochemical oxidants (hydrocarbons)" to "ozone".

3. Section 52.1972 is amended by adding the following sentences to the existing paragraph:

§ 52.1972 Approval status.

* * * With the exceptions set forth in this subpart, the Administrator approves Oregon's plan for the attainment and maintenance of the national standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds that the carbon monoxide and ozone attainment plans satisfy all requirements of Part D, Title 1, of the Clean Air Act as amended in 1977, except as noted in the following sections.

In addition, continued satisfaction of Part D requirements for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs issued between January 1978 and January 1979. Additional RACT requirements must be submitted by each subsequent January for sources covered by CTGs issued by the previous January. Further, new source review permits issued pursuant to Section 173 of the Clean Air Act will not be deemed valid by EPA unless the provisions of Section V of the emission offset interpretive rule published on January 16, 1979 (44 FR 3274) are met.

4. Section 52.1973 is amended by adding a new table as follows:

§ 52.1973 Attainment dates for national standards.

The following table presents required attainment dates for national standards. These dates reflect the information presented in Oregon's plan.

Air quality control region and nonattainment area	Pollutant						
	-TSP-		-SO ₂ -		NO _x	CO	O ₃
	1st*	2nd**	1st*	2nd**			
Portland Interstate AQCR:							
1. Portland-Vancouver AQMA (Or. portion).....	a	f	a	b	b	g	
2. Salem.....	a	b	a	b	b	e	
3. Eugene-Springfield AQMA.....	a	f	a	b	b	h	
4. Remainder of AQCR.....	c	c	a	b	b	d	
Southwest Oregon Intrastate AQCR:							
1. Medford-Ashland AQMA.....	e	f	a	b	b	g	
2. Remainder of AQCR.....	c	c	a	b	b	b	
Northwest Oregon Intrastate AQCR.....							
Central Oregon Intrastate AQCR.....	a	c	a	b	b	b	
Eastern Oregon Intrastate AQCR.....	e	c	a	b	b	b	

*1st=Primary.

**2nd=Secondary.

a. Area designated as having air quality levels presently below the primary standards or area is unclassifiable.

b. Area designated as having air quality levels presently below secondary standards or area is unclassifiable.

c. May 1975.

d. May 31, 1976.

e. December 31, 1982.

f. As expeditiously as practicable with date to be identified in plan due to be submitted by July 1, 1980.

g. Later than December 31, 1982 but before December 31, 1987 with specific date to be identified in alternatives analysis due July 1, 1980.

h. December 31, 1985.

5. In § 52.1981, paragraphs (b) and (c) are added as follows:

§ 52.1981 Extensions.

(b) The Administrator hereby extends the attainment date for carbon monoxide in the Eugene-Springfield non-attainment area to December 31, 1985 and in the Portland, and Medford-Ashland non-attainment areas to beyond December 31, 1982, but before December 31, 1987. The actual attainment date for the Portland and Medford-Ashland areas is to be identified in the transportation control plan alternatives analysis for each area, due to be submitted by July 1, 1980. No further analysis is required for the Eugene-Springfield area.

(c) The Administrator hereby extends the attainment date for ozone in the Portland non-attainment area to beyond December 31, 1982 but before December 31, 1987. The actual attainment date is to be submitted by July 1, 1980.

6. Section 52.1982 is added as follows:

§ 52.1982 Control strategy: Ozone.

(a) Part D—*CONDITIONAL APPROVAL*. (1) The Salem area attainment plan is approved as satisfying Part D requirements provided that the State, within six months from the date of this publication, (December 24, 1980) meets the following conditions:

(i) The rules governing VOC sources are made equivalent to reasonably available control technology.

(ii) Approvable source test procedures are submitted by the State.

(iii) Formally adopted compliance schedules are submitted by the State.

(2) The first stages of two-stage attainment plans for the Portland and Medford-Ashland air quality maintenance areas are approved as satisfying Part D requirements provided that the State, within six months from the date of this publication (December 24, 1980), meets the following conditions:

(i) The rules governing VOC sources are made equivalent to reasonably available control technology.

(ii) Approvable source test procedures are submitted by the State.

(iii) Formally adopted compliance schedules are submitted by the State.

7. Section 52.1985 is added as follows:

§ 52.1985 Rules and regulations.

(a) Part D—*CONDITIONAL APPROVAL*.

(1) New Source Review regulations (OAR 340-20-190 through-197) are approved as satisfying Part D requirements provided that the State, within six months from the date of this publication (December 24, 1980), meets the following conditions:

(i) A specific emission offset program with regulations is adopted and submitted.

(ii) The rule governing multiple sources under single ownership be modified so as to require that other sources owned by the company applying for a permit be in compliance "with all applicable emission limitations and standards under the Act."

(2) Regulations for volatile organic compound (VOC) emissions (OAR 340-22-100 through -150) are approved as satisfying Part D requirements provided that the State, within six months from the date of this publication (December 24, 1980), meets the following conditions:

(i) *Gasoline Marketing*. (A) The definition of "delivery vessel" is changed so as to require vapor capture (where previously excluded) in the transfer of gasoline from terminals to bulk plants.

(B) Conflicting vapor capture exemptions between OAR 340-20-110(2)(c) and OAR 340-20-115(5) is eliminated by removing OAR 340-20-110(2)(c) from the rules.

(C) The exemption of delivery vessels and storage tanks at gasoline dispensing facilities from vapor capture requirements, where the source (gasoline dispensing facility) receives 250,000 gallons of gasoline or less per year from a bulk plant, is changed to an exemption of no greater than 10,000 gallons per month.

(D) The vapor capture rules for (1) "Small Storage Tanks" and (2) "Bulk Gasoline Plants and Delivery Vessels" are revised to require vapor-tight capture systems.

(ii) The asphalt rule contains limits, consistent with EPA guidance, on the amount of solvent which is permitted in emulsified asphalts.

(iii) *Surface Coating*. (A) The term "coating line" is defined so as to include the coater, flash-off area, and dryer.

(B) Documentation is provided that the "inert gas process paper coating" rule is in fact reasonably available control technology.

(iv) *Degreasers*. (A) Specific requirements for agitated solvents, heated solvents, and solvents with higher vapor pressures are added to the cold cleaner rule.

(B) Both a powered cover and specific freeboard ratio are required for open top vapor degreasers.

(C) A major control device is required for conveyORIZED degreasers with an air/vapor interface greater than two square meters.

(v) The State submits approvable source test procedures for VOC sources.

(vi) The State submits formally adopted compliance schedules for VOC sources.

(3) Portland's automobile inspection and maintenance program is approved as satisfying Part D requirements provided that the State submits its operating regulations to EPA by July 15, 1980.

(i) Specific conditions are submitted under which the Director may lift the prohibition on wigwag waste burner operation.

(ii) A visible emission rule for hogged fuel boilers that restricts plume opacity to twenty percent (20%) or less is adopted and submitted.

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40 CFR Part 52

[FRL 1523-2]

Ohio; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA proposed on June 12, 1979, 44 FR 33711, to revise the sulfur dioxide (SO₂) emission limitations for Cleveland Electric Illuminating Company's Avon Lake and Eastlake power plants in Ohio from 1.15 and 1.43 lbs. SO₂ per MBTU to 6.09 and 6.58 lbs. SO₂ per MBTU, respectively. After

consideration of public comments and new EPA modeling analyses, EPA is taking final action to revise the emission limitations to 4.10 or 4.65 lbs. SO₂ per MBTU for Avon Lake, depending on the sulfur content of oil burned at the plant, and 5.64 lbs. SO₂ per MBTU for Eastlake. These limits are based on the plants' current stack configuration with good engineering practice formula credit given for the plants recently-constructed tall stacks. However, EPA is today announcing a revision to its stack height policy. Under the revised policy, sources seeking credit for raising existing stacks will be required to provide a fluid modeling or field study demonstration that the stack height increase is necessary to avoid excessive concentrations due to downwash, wakes and eddies. Since this is a change in policy, CEI is being given time to perform the necessary studies demonstrating what stack height credit is appropriate. If EPA accepts the study results, EPA will propose within a year alternative emission limits based on the demonstration. If CEI fails to submit acceptable studies in time to enable EPA to propose new limits within a year, emission limitations based on the plants' stack configuration prior to construction of the new stacks will become effective one year from today. Those limits, which are also being promulgated today, are 3.43 or 3.93 lbs. SO₂ per MBTU for Avon Lake, depending on the sulfur content of oil burned at the plant, and 3.04 lbs. SO₂ per MBTU for Eastlake.

EFFECTIVE DATE: This action is effective on June 24, 1980. For additional information see "Supplementary Information".

ADDRESS: The docket for this final rule, No. 5A-79-1, is available for inspection at EPA's Region V, 230 South Dearborn Street, Chicago, Illinois, and at the Public Information Reference Unit, Room 2922, United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected during normal business hours.

FOR FURTHER INFORMATION CONTACT: Steve Rothblatt, Chief, Air Programs Branch, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6030.

SUPPLEMENTARY INFORMATION: On June 12, 1979, EPA proposed to revise the emission limitations applicable to the Avon Lake and Eastlake power plants owned by the Cleveland Electric Illuminating Company (CEI). See 44 FR 33711. EPA proposed to change the emission limitations from 1.15 to 6.09

lbs. sulfur dioxide (SO₂) per million BTU for the Avon Lake plant and from 1.43 to 6.58 lbs. SO₂ per million BTU for the Eastlake plant. As discussed in the proposal, the new emission limitations proposed on June 12, 1979, reflected the emission levels of the plants at that time.

EPA proposed the revisions based on its conclusion that the urban RAM model, which had been used to calculate the existing emission limitations, was inappropriate for use in the areas where the plants are located. EPA, however, rejected the rural RAM model proposed by CEI, because that model, like the urban RAM model, does not account for meteorological conditions due to lake shore fumigation. Since EPA believed that lake shore fumigation from Lake Erie could result in higher ambient concentrations than concentrations predicted by the rural RAM model, EPA concluded it could not set limitations based on that model.

In the absence of an appropriate model, EPA proposed to allow the plants to continue operating at status quo levels. Based in part on monitoring data submitted by CEI and on the construction of new taller stacks for the plants, EPA concluded that status quo levels would reasonably assure attainment and maintenance of the ambient standards. In addition, EPA proposed that CEI conduct a monitoring study to gather more data on meteorological conditions and ambient concentrations at the plants. The data could also be used in developing an analytical tool to calculate impacts from shoreline fumigation in similar situations.

Due to requests for an extension of the comment period, the Agency could not complete final action on the proposed revisions before the plants' October 19, 1979, compliance date. The Agency therefore suspended the plants' compliance date until no later than the plan attainment date of June 17, 1980. See 45 FR 1022 (January 4, 1980). The Commonwealth of Pennsylvania, joined by several Northeastern states, and an environmental group filed petitions for review of EPA's compliance date suspension in the U.S. Court of Appeals for the Sixth Circuit (Nos. 80-3147 and 80-3148). Certain court papers filed by the Agency have been included in the rulemaking docket.

From July to October 1979, EPA Region V's technical staff designed the monitoring network for the CEI plants. The staff used the MPTER model, a rural multi-source model, as one tool in that process. The model was used to calculate the likely maximum impacts under non-lake-induced meteorological

conditions. The modeling results raised some questions about the adequacy of the proposed status quo emission limitations to protect ambient standards. In February 1980, EPA published for comment the monitoring plan it had developed for the plants. See 45 FR 11855, February 22, 1980. The Notice discussed the implications of the MPTER modeling results and solicited public comment on the analyses.

The Agency received numerous and extensive comments on the June 1979 proposal notice and the February 1980 monitoring notice. Several commenters questioned EPA's initial conclusion that status quo limitations would insure protection of the ambient standards. EPA's response to these comments is discussed below. The comments also questioned whether the new taller stack at each plant reflects good engineering practice height, whether CEI's monitoring data is reliable, and whether EPA considered the effects of the proposed revision on acid rain, sulfate formation and long-range pollutant transport. EPA's detailed responses to these comments is contained in a separate document in the rulemaking docket and is available on request.

In light of the substantial questions raised by the commenters and by EPA's MPTER modeling work as to whether status quo emissions would protect ambient standards, EPA undertook further modeling analyses of the plants. EPA used its single source reference model, the CRSTER model, to conduct the analyses. The CRSTER model is discussed in EPA's *Guidelines on Air Quality Models* as the benchmark model for non-urban areas. See *Guideline on Air Quality Models*, EPA-450/2-78-027, OAQPS No. 1.2-080, April 1978. Prior to June 1979 EPA guidance permitted use of either the CRSTER model or the RAM rural model for single sources in non-urban areas. Since the models often produced inconsistent results for similar sources, EPA determined to recommend one model for use by its Regional Office. In June 1979 EPA instructed its Regional Offices to use modeling parameters consistent with the CRSTER model in modeling non-urban areas, unless other techniques were shown on a case-by-case basis to provide more appropriate and accurate results. EPA's conclusion was based on its judgment that the CRSTER model was intended to be the benchmark model for isolated sources in non-urban areas, on its belief that the rural RAM model would not produce more accurate results, and on the need for additional technical support for improvements made in the RAM rural model.

EPA also concluded that the CRSTER model should be used in preference to the MPTER multi-source model used by Region V to establish the monitoring network. A review of MPTER modeling data for the plants indicates that the plants' emissions are of overwhelming significance when compared to other sources in the vicinity of the plants. The single source CRSTER model is therefore more appropriate for modeling these plants than the multi-source MPTER model which is designed to model multiple sources of comparable significance. EPA therefore determined that the CRSTER model, rather than the rural RAM or MPTER model, should be used in its reevaluation of the CEI plants.

EPA modeled the plants at their status quo emission levels using five years of meteorological data, two sets of stack heights, and two patterns of oil use at Avon Lake. (Avon Lake has eight oil-fired peaking units and 4 coal-fired units.) Meteorological data from the Cleveland Hopkins Airport for the years 1973 to 1977 was used. The plants were modeled using current stack configurations and giving each plant credit for its new tall stack based on EPA's good engineering practice (GEP) height formula.* See EPA's Proposed Stack Height Regulations, 44 FR 2608, January 12, 1979. The plants were also modeled using the stack configurations prior to construction of the new tall stacks. In both cases, the Avon Lake plant was given full stack height credit for its old tall stack, since that stack was completed prior to December 31, 1970, and was therefore not subject to Section 123 or EPA's proposed stack height regulations. (Section 123, the stack height provision of the Clean Air Act, exempts from coverage stack heights in existence prior to December 31, 1970.) In both cases, the Eastlake plant was limited to GEP formula credit for its old tall stack since construction on that stack was completed after December 31, 1970. For each stack height case, the Avon Lake plant was modeled assuming, first, use of 1% sulfur content oil and second, use of 0.3% sulfur content oil.

The modeling based on current stack configurations with GEP credit showed that status quo limits would cause violations of the three-hour secondary

SO₂ standard under Class A stability conditions. For this case, the emission limitations necessary to prevent standard violations were calculated for Avon Lake to be 4.10 lbs. SO₂ per MBTU if the oil-fired units burn 1% sulfur oil and 4.65 lbs. SO₂ per MBTU if the oil-fired units burn 0.3% sulfur oil. For Eastlake, the limitation necessary to protect standards was calculated to be 5.64 lbs. SO₂ per MBTU. Modeling based on stack configurations prior to construction of the new tall stacks at both plants, with GEP credit for the old tall stack at Eastlake, showed that lower emission limitations are necessary to protect standards. At Avon Lake, the necessary emission limitations would be 3.43 lbs. SO₂ per MBTU if the oil-fired units burn 1% sulfur oil and 3.93 lbs. SO₂ per MBTU if the units burn 0.3% sulfur oil. At Eastlake, the limitation would be 3.04 lbs. SO₂ per MBTU. For reasons discussed below, EPA is today promulgating both sets of emission limitations. The limitations based on the new tall stacks with GEP credit will remain effective for one year. At the end of the year, the emission limitations based on stack configurations prior to construction of the new stacks will become effective, unless CEI demonstrates through fluid modeling or a field study the amount of stack height credit appropriate for the new stacks and EPA proposes alternative emission limitations within the year. If EPA proposes alternative limitations, the first set of limitations will remain in effect until EPA takes final action on the proposed alternative limits.

Stack Height: EPA's proposed stack height regulations allow the Administrator discretion to credit stack height increases at existing sources based on a good engineering practice (GEP) formula, or to require such sources to justify the use of the formula by demonstrating through fluid modeling or a field study the existence of an air quality problem due to downwash, wakes or eddies. See 44 FR 2610, col. 2, January 12, 1979. Over the past year, EPA has become increasingly concerned that current atmospheric loadings of SO₂ and other pollutants are resulting in significant regional air pollution problems, particularly acid rain. Preliminary evidence indicates that acid deposition can destroy fish life in sensitive aquatic environments and cause leaching of toxic substances from soil. See e.g., "The LRTAP [Long Range Transboundary Air Pollution] Problem in North America: a preliminary overview." (Available in the docket.) Since publication of EPA's proposal, several sources have requested

relaxations of SO₂ emission limitations in connection with stack height increases up to the height permitted by the GEP formula. EPA is concerned that allowing sources automatic credit for GEP formula height is improperly encouraging emission limit relaxations and SO₂ emission increases that aggravate the acid rain problem.

EPA's proposed regulation on stack height increases was based on its interpretation of Section 123 and Congress' intent as evidenced in the legislative history. At the time of its stack height proposal EPA favored the use of the GEP formula to reduce the requirement for additional analyses which would be associated with case-by-case reviews of proposed stack height increases. EPA has recently reviewed both the statute and legislative history in light of its mounting concern that stack height increases may contribute to acid rain. EPA has also considered public comments on its stack height proposal, some of which argue that no credit for stack height increases should be permitted without a demonstration of need based on fluid modeling or a field study. As a result of the review, EPA has determined to change its policy on stack height increases at existing sources.

Section 123 prohibits stack height credit for that portion of a stack which exceeds good engineering practice (GEP) height. The Administrator is granted discretion to determine what constitutes good engineering practice height, based on two statutory directives. First, the statute provides that GEP height is to be the height necessary to prevent excessive concentrations due to downwash, wakes or eddies created by the source, nearby structures, or nearby terrain, as determined by the Administrator. Second, GEP is not to exceed two and a half times the height of the source unless the source demonstrates, to the Administrator's satisfaction, that a greater height constitutes GEP. The statute therefore establishes a maximum GEP height for most sources and leaves to the Administrator's discretion what height under two and a half times the height of a source constitutes GEP.

While the legislative history offers no explicit guidance on how the Administrator is to exercise his discretion, it indicates clear Congressional intent to minimize atmospheric dispersion of pollutants through use of tall stacks. The House Committee Report notes that tall stacks do not significantly reduce total emissions of sulfur oxides, and therefore do not decrease total loadings of

*The modeling based on current stack configurations assumes full use of the recently-constructed tall stacks at both plants. At present, the new stack at Avon Lake is fully operational. At Eastlake, two of four boilers planned to vent through the new stack are venting through it at this time. A third boiler is to be connected in September and the fourth boiler is to be connected by January 1981.

sulfates and other sulfur compounds, despite causing a reduction in local ambient concentrations; that increases in sulfates contribute to acid rain; that increases in sulfates are associated with increases in sulfur oxide emissions through tall stacks; and that use of tall stacks results in long-range pollutant transport. See H.R. Rep. No. 95-294, 95th Cong. 1st Sess. 83-86 (1977). The House Committee Report provides the most detailed legislative guidance on stack heights, since the House Committee developed the proposals on dispersion techniques that were adopted by the full Congress. In Section 123, Congress responded to its concern with total loadings by restricting use of tall stacks to meet ambient standards.

In view of Congress' intent to limit stack height credit as a means of reducing total emission loadings, and EPA's concern that use of its GEP formula for stack height increases is increasing pollutant loadings and acid rain, EPA has concluded that an existing source increasing its stack height should not automatically receive credit for the increase on the basis of the GEP formula. In the future, any source seeking to raise its stack above the de minimis level defined in EPA guidance will be required to conduct a fluid modeling study or field study to demonstrate the GEP height necessary to avoid excessive concentrations due to downwash, wakes and eddies. EPA believes that the potential severity of the acid rain problem requires the Agency to conduct the additional analyses associated with case-by-case review of proposed stack height increases.

In view of this policy change, CEI, and all other applicants for stack height increases, will be required to provide fluid modeling or field study demonstrations of what constitutes GEP stack height. Because CEI had no prior notice of this policy revision, the company will have one year to conduct the necessary fluid modeling or field studies for the Avon Lake and Eastlake plants. During that time, the emissions limitations based on GEP formula credit for the new tall stacks, which are being promulgated today, will be in effect. If the required demonstrations are submitted within nine months, which will give EPA time to review the submittal and propose alternative emission limitations within a year, the emission limitations based on GEP formula credit for the new stacks will remain in effect until EPA takes final action on the proposed alternative limits. If no acceptable demonstrations are provided in time and EPA does not

propose alternative limits, the lower emission limitations promulgated today will become effective one year from today.

Lake Shore Fumigation: As stated in the June 1979 proposal notice, EPA is concerned that lake shore fumigation will cause higher ambient concentrations than those due to the meteorological conditions accounted for by existing models. The CRSTER model, like the rural RAM and urban RAM models, does not account for lake shore effects. Because of its concern that lake shore fumigation could cause standard violations that would not be predicted by the CRSTER model, EPA determined to use the best available techniques to calculate concentrations associated with lake shore fumigation. First, meteorological data was screened to determine the three-hour periods most likely to cause maximum concentrations due to shoreline fumigation. These periods were then analyzed using state-of-the-art techniques to determine fumigation concentrations. Third, the concentrations predicted for maximum fumigation conditions were then compared to high concentrations predicted by CRSTER. The comparison indicates that concentrations associated with lake shore fumigation in most cases would not be higher than high concentrations calculated by CRSTER for Class A stability conditions. The analysis suggests that lake shore fumigation could be controlling in certain circumstances, however, EPA does not have sufficient information available at this time to reach that conclusion. Consequently, EPA believes that the emission limitations based on the CRSTER modeling will be adequate to insure attainment and maintenance of the ambient standards until such time as additional information is available on the effects of lake shore fumigation. A detailed discussion of the CRSTER modeling and the lake shore fumigation analysis is available in the docket. The document is entitled "Summary Report on Modeling for the Avon Lake and Eastlake Plants."

Class A Stability: As noted, the controlling meteorological conditions for establishing emission limitations for the plants was stability Class A. In response to a remand order from the U.S. Court of Appeals for the Sixth Circuit, EPA has reconsidered the technical justification for use of Class A dispersion coefficients. In February 1979, EPA proposed to continue use of Class A coefficients in air quality modeling. See 44 FR 7798 (February 7, 1979). On June 16, 1980, EPA responded to comments on its proposal and issued its final

determination to continue use of Class A coefficients. In view of EPA's decision to retain Class A and the fact that Class A is the controlling meteorological condition for the two plants, the Agency believes it is appropriate to use Class A results in setting emission limitations for the two plants.

The emission limitations based on the current stack configurations (4.10 and 4.65 lbs. SO₂ for Avon Lake and 5.64 lbs. SO₂ for Eastlake) are effective today and will remain in effect for one year. The alternative emission limitations (3.43 and 3.93 lbs. SO₂ for Avon Lake and 3.04 lbs. SO₂ for Eastlake) will become effective at the expiration of the year, unless EPA proposes within a year emission limitations based on a fluid modeling study or field study submitted by CEI which demonstrates the amount of stack height credit appropriate for the new tall stacks. To give EPA time to review the demonstration and propose alternative limits, EPA encourages CEI to submit the fluid modeling or field study demonstration within nine months of today. If EPA proposes alternative emission limitations based on the CEI submittal, the emission limitations that are effective today will remain in effect until EPA takes final action on the proposed alternative limitations. While the regulation is immediately effective, EPA recognizes that the utility may require up to sixty days to arrange any necessary changes in its coal supplies. EPA will therefore refrain from taking any enforcement action against the plants during the sixty-day period following the effective date of these regulations.

This action is effective on the date of publication because these emission limitations replace more stringent emission limitations that became effective on June 17, 1980, the final compliance date for the plants and the attainment date for the Ohio SO₂ plan. Since EPA has concluded that the more stringent emission limitations are lower than necessary to meet the national ambient standards, EPA believes it is appropriate to immediately replace the excessively stringent limits with the emission limitations promulgated today.

Under Executive Order 12044 (43 FR 12661), EPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations, "specialized". I have reviewed this proposed regulation pursuant to the guidance in EPA's response to Executive Order 12044, "Improving Environmental Regulations,"

signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110 and 123 of the Clean Air Act, as amended, [42 U.S.C. 7410 and 7423])

Dated: June 17, 1980.

Barbara Blum,

Acting Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart KK—Ohio

1. Section 52.1881 is amended by revising paragraph (b)(35)(vi) and (vii), and (b)(38)(iii) and (iv) as follows:

§ 52.1881 Control Strategy: Sulfur oxides (sulfur dioxide).

(b) Regulations for the control of sulfur dioxide in the State of Ohio.

(35) In Lake County * * *

(vi) The Cleveland Electric Illuminating Co. or any subsequent owner or operator of the Eastlake Plant in Lake County, Ohio, shall not cause or permit the emission of sulfur dioxide from any stack at the Eastlake Plant in excess of 5.64 pounds of sulfur dioxide per million Btu actual heat input from the effective date of these regulations until one year from that date or until the date provided in the last sentence of (35)(vii), whichever is later.

(vii) The Cleveland Electric Illuminating Co. or any subsequent owner or operator of the Eastlake Plant in Lake County, Ohio, shall not cause or permit the emission of sulfur dioxide from any stack at the Eastlake Plant in excess of 3.04 pounds of sulfur dioxide per million Btu actual heat input from the date that is one year after the effective date of these regulations unless the Administrator shall have proposed in the Federal Register emission limitations based on a fluid modeling or field study demonstration submitted by the owner or operator which demonstrates the stack height necessary to avoid excessive concentration due to downwash, wakes or eddies caused by the source, nearby structures or nearby terrain obstacles. In the event the Administrator proposes alternative emission limitations based on the demonstration described in this subparagraph the emission limit contained in subparagraph (35)(vi) shall remain in effect, until the Administrator takes final action on the proposed limits.

(38) In Lorain County * * *

(iii) The Cleveland Electric

Illuminating Co., or any owner or operator of the Avon Lake Plant in Lorain County, Ohio, shall not cause or permit the emission of sulfur dioxide in pounds per million Btu actual heat input from any stack at the Avon Lake Plant in excess of the rates specified in one of the following alternatives from the effective date of these regulations until one year from that date or until the date provided in the last sentence of (38)(iv), whichever is later:

Alternative 1

Stack No., Boiler identification, and Emission limit

1—1,2—1.06
2—3,4—1.06
3—5,6—1.06
4—7,8—1.06
5—9—4.10
6—10—4.10
7—11—4.10
8—12—4.10

Alternative 2

Stack No., Boiler identification, and Emission limit

1—1,2—0.32
2—3,4—0.32
3—5,6—0.32
4—7,8—0.32
5—9—4.65
6—10—4.65
7—11—4.65
8—12—4.65

(iv) The Cleveland Electric

Illuminating Co., or any subsequent owner or operator of the Avon Lake Plant in Lorain County, Ohio, shall not cause or permit the emission of sulfur dioxide from any stack of the Avon Lake Plant in pounds per million Btu actual heat input in excess of the rates specified in one of the following alternatives from the date that is one year after the effective date of these regulations unless the Administrator shall have proposed in the Federal Register emission limitations based on a fluid modeling or field study demonstration submitted by the owner or operator which demonstrates the stack height necessary to avoid excessive concentrations due to downwash, wakes or eddies caused by the source, nearby structures or nearby terrain obstacles. In the event the Administrator proposed alternative emission limitations based on the demonstration described in this subparagraph the emission limitation contained in subparagraph (38)(iii) shall remain in effect until the Administrator takes final action on the proposed limits.

Alternative 1

Stack No., Boiler identification, and Emission limit

1—1,2—1.06
2—3,4—1.06
3—5,6—1.06
4—7,8—1.06
5—9—3.43
6—10—3.43
7—11—3.43
8—12—3.43

Alternative 2

Stack No., Boiler identification, and Emission limit

1—1,2—0.32
2—3,4—0.32
3—5,6—0.32
4—7,8—0.32
5—9—3.93
6—10—3.93
7—11—3.93
8—12—3.93

[FR Doc. 80-19039 Filed 6-23-80; 8:45 am]
BILLING CODE 6580-01-M

40 CFR Parts 52 and 81

[FRL 1523-6]

Approval and Promulgation of State Implementation Plans; Designation of Areas for Air Quality Planning Purposes

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final Rulemaking; Correction.

SUMMARY: On January 30, 1980 at 45 FR 6786 the U.S. Environmental Protection Agency (USEPA) published a Notice of Final Rulemaking. The notice contained charts on page 6788. The chart entitled "Illinois SO₂" contained the wrong designation for Massac County located in Air Quality Control Region 72 (AQCR 72). The correct designation is "Cannot be Classified". On February 21, 1980 at 45 FR 11472 USEPA published a Notice of Final Rulemaking which contained an incorrect statement. That notice on page 11481 indicated that the Illinois State Implementation Plan includes a provision which exempts methylene chloride from control. Illinois removed that exemption from its finally adopted regulations.

FOR FURTHER INFORMATION CONTACT: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 886-6029.

SUPPLEMENTARY INFORMATION: In a Notice of Final Rulemaking at 45 FR 6786 (January 30, 1980) USEPA codified the section 107 Attainment Status Designations which Illinois had

proposed in a Notice of Proposed Rulemaking at 44 FR 38587, July 2, 1979.

The codification on page 6788 contained an incorrect designation for Massac County listed under Air Quality Control Region 72 (AQCR 72) for sulfur dioxide. The chart should have included the following designation;

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40, Code of Federal Regulations is amended by designating certain areas in Illinois as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.314 Illinois.

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Illinois SO2				
AQCR 72:				
Massac County.....			X	

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

On February 21, 1980 45 FR 11472 USEPA published Final Rulemaking action on Illinois' Part D Nonattainment Plan. At page 11481 in the third column, the first full paragraph, the notice contains a statement that the Illinois SIP includes a provision which exempts methylene chloride from controls. This statement is incorrect as Illinois' Final Regulations did not contain the provision exempting methylene chloride from controls. Therefore, that entire paragraph should be stricken from the notice.

(42 U.S.C. 7410).

Dated: May 27, 1980.

John McGuire,
Regional Administrator.

(FR Doc. 80-10987 Filed 6-23-80; 8:45 am)

BILLING CODE 6550-01-M

DEPARTMENT OF EDUCATION

45 CFR Part 150

Law School Clinical Experience Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary of Education issues regulations for the Law School Clinical Experience Program. The purpose of the regulations is to implement Title XI of the Higher Education Act of 1965, as amended. The regulations will give better guidance to applicants and improve program management by broadly defining the types of projects the Secretary intends to support under this program. The regulations also specify the selection criteria to be used in evaluating applications.

EFFECTIVE DATE: The regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Donald N. Bigelow, Chief, Graduate Training Branch, Division of Training and Facilities, 400 Maryland Avenue, SW. (Room 3060, ROB 3), Washington, D.C. 20202, telephone (202-245-2347).

SUPPLEMENTARY INFORMATION: The President has proposed budget recessions to the Congress that may eliminate funds for the Law School Clinical Experience program. If the Congress approves the proposed recessions, a notice to the public will be published in the Federal Register, stating that the recessions have been approved.

Summary of Comments and Responses

In the Notice of Proposed Rulemaking published in the Federal Register on February 19, 1980 (45 FR 10821), the Commissioner of Education invited comments on the proposed regulations to implement Title XI of the Higher Education Act of 1965, as amended. One commenter agreed with all of the provisions of the proposed regulations. The following is a summary of the other comments received and the responses of the Department of Education.

Comment. One commenter asked that consideration be given to expanding the eligibility requirements for the program to allow Community Law Clinics and Neighborhood Legal Services Units to receive grants under this program.

Response. No change has been made in the regulations. Section 1101 specifies that the Secretary is authorized to provide assistance only to accredited law schools.

Comment. One commenter noted that the definition of clinical legal education utilized by the program was deficient, in that it is limited to the lawyer's role in dispute resolution. The commenter asked that the definition be expanded to include the lawyer's role in nonadversarial legal processes.

Response. No change has been made in the regulations. The Act gives preference to programs providing clinical experience in the preparation and trial of cases. However, the regulations, in providing that training be given in the practice of law, assume that such training will include training in nonadversarial processes appropriate both to the general practice of law and to, the preparation and trial of cases.

Comment. One commenter asked that the regulations give higher priority to clinics that provide help to otherwise underrepresented groups who seek to advance a "public interest."

Response. No change has been made in the regulations. The Secretary recognizes the value of public interest advocacy. The purpose of the program is, however, to provide assistance to law schools for the establishment or expansion of clinical experience in general and not to promote a particular client group. However, to ensure an equitable distribution throughout the United States in the types of clients served, the Secretary may fund different kinds of projects in law school clinical experience, so that when all funded projects are considered as a whole, they will serve a variety of client groups.

Comment. One commenter asked that consideration be given to expand the regulations to allow for funding of a non-legal component that would expose law students to the kind of expertise—other than that of lawyers—they would frequently, as lawyers, confront or have to rely on.

Response. No change has been made in the regulations. The Secretary believes that the legislative intent of this program is to provide actual clinical experience in legal skills such as the preparation and trial of actual cases and the settlement of cases and controversies outside the courtroom. Therefore, non-legal training of the type requested by the commenter is not allowed.

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive section of the regulations.

(Catalog of Federal Domestic Assistance No. 13.584; Law School Clinical Experience Program)

Dated: June 19, 1980.

Stephen A. Minter,
Acting Secretary of Education.

Title 45 of the Code of Federal Regulations is amended by adding Part 150 to read as follows:

PART 150—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

Subpart A—General

Sec.

150.1 Law School Clinical Experience Program.

150.2 Eligible parties.

150.3 Regulations that apply to the Law School Clinical Experience Program.

150.4 Definitions.

Subpart B—What Kinds of Projects Does the Department of Education Assist under this Program?

150.10 Authorized activities.

Subpart C—How is Application Made for a Grant?

[Reserved]

Subpart D—How is a Grant Made?

150.30 How does the Secretary evaluate an application?

150.31 What selection criteria does the Secretary use?

Subpart D—What Conditions Must a Grantee Meet?

150.40 Costs.

Authority: Title XI, Sec. 1101–1103 of the Higher Education Act of 1965, as amended by Pub. L. 90–575, 82 Stat. 1048; Pub. L. 92–318, 86 Stat. 323; Pub. L. 94–482, 90 Stat. 2164; and Pub. L. 96–49, 93 Stat. 354.

[20 U.S.C. 1136–1136a and b]

Subpart A—General

§ 150.1 Law School Clinical Experience Program.

The Law School Clinical Experience Program provides assistance to accredited law schools for establishing or expanding programs of clinical experience for students in the practice of law.

(20 U.S.C. 1136–1136b)

§ 150.2 Eligible parties.

Individual law schools that have been accredited by a nationally recognized agency approved by the Secretary are eligible to apply.

(20 U.S.C. 1136)

§ 150.3 Regulations that apply to the Law School Clinical Experience Program.

(a) The following regulations apply to the Law School Clinical Experience Program:

(1) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant

Programs) and 45 CFR Part 100c (Definitions); and

(2) The regulations in Part 150.

§ 150.4 Definitions.

(a) Definitions in EDGAR. The following terms used in this part are defined in EDGAR, Part 100c:

Applicant
Award
Grant
Project
Secretary

Subpart B—What Kinds of Projects Does the Department of Education Assist under this Program?

§ 150.10 Authorized activities.

(a) Authorized activities include the development of combinations of skills usable in the practice of law. These include, but are not limited to, the following: interviewing witnesses, counseling clients, negotiating compromises, drafting documents, trial preparation, advocacy, and training in professional responsibility.

(b) The Secretary gives preference to programs providing legal experience, to the extent practicable, in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

(20 U.S.C. 1136)

Subpart C—How is Application Made for a Grant? [Reserved]

Subpart D—How is a Grant Made?

§ 150.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 150.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses following the title.

(d) The Secretary may give priority to applications of relative equal quality for projects that:

(1) Ensure a wide geographic distribution throughout the United States of law school clinical experience programs; and

(2) Ensure that a wide variety of client groups are served.

(20 U.S.C. 1221e–3(a)(1); 20 U.S.C. 1136a)

§ 150.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See § 100a.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Fiscal commitment.* (15 points)

(1) The Secretary reviews each application for information that indicates that the law school is making a clear financial commitment to clinical legal education.

(2) The Secretary looks for information that shows the increased degree to which the institution's regular budget is devoted to continue an existing program or to establish a new program.

(g) *New or expanded program.* (15 points)

(1) The Secretary reviews each application for information that shows that the proposed project will either establish for the first time a new program, or expand an existing program of clinical legal education.

(2) The Secretary looks for information that shows that an existing program would:

(i) Develop new areas of practical experience;

(ii) Increase the number of participating students; and

(iii) Provide appropriate and improved supervision.

(h) *Experience in the preparation and trial of cases.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project will provide actual experience in the preparation and trial of actual cases, including administrative cases and the settlement of cases and controversies outside the courtroom.

(2) The Secretary looks for information that shows that the experience will include, but not be limited to, the development of such skills as interviewing witnesses, counseling clients, negotiating compromises, drafting documents, trial preparation, advocacy, and training in professional responsibility.

(i) *Academic credits.* (7 points)

The Secretary reviews each application for information that shows that the proposed program of law school clinical experience provides for the award of appropriate academic credits to participating students.

(j) *Supervision.* (15 points)

The Secretary reviews each application for information that shows the extent to which the proposed project will increase the law school's involvement in clinical legal education while providing adequate on-the-job supervision to students while they are learning legal skills.

(k) *Incorporation into curriculum.* (5 points)

The Secretary reviews each application for information that indicates that the law school will incorporate into its curriculum the relevant experiences and the knowledge acquired from the Law School Clinical Experience Program.

(20 U.S.C. 1221e-3(a)(1); 20 U.S.C. 1136a)

Subpart E—What Conditions Must a Grantee Meet?

§ 150.40 Costs

(a) The Secretary makes available funds to cover up to 90 percent of the cost of establishing and implementing a Law School Clinical Experience Project, subject to the limitations and applicable cost principles in EDGAR. Funds for a particular project may not exceed \$75,000 in any fiscal year.

(b) Allowable costs include expenses for—

(1) Planning, preparation of related teaching materials, and administration;

(2) The training of faculty members;

(3) Payment for the director of supervision and other faculty or attorneys directly involved in supervision;

(4) Appropriate travel and per diem;

(5) Other activities directly related to the operations of the program.

(20 U.S.C. 1136b)

[FR Doc. 80-19005 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-02-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[S.O. No. 1288-A]

Chicago & North Western Transportation Co. Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. at De Kalb, Ill.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1288-A.

SUMMARY: This order vacates Service Order No. 1288, which permitted the Chicago and North Western Railroad to operate over tracks formerly operated by the Milwaukee Railroad, and which authority is now in Service Order No. 1474.

EFFECTIVE DATE: 11:59 p.m., June 19, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

Decided June 18, 1980.

Upon further consideration of Service Order No. 1288, (45 FR 62925; 43 FR 24539, 56673; and 44 FR 31982), which authority is now contained in Service Order No. 1474, and good cause appearing therefor:

It is ordered,

§ 1033.1288 Service order No. 1288.

Chicago and North Western Transportation Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company at DeKalb, Illinois is vacated effective 11:59 p.m., June 19, 1980.

This action is taken under authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,

Acting Secretary.

[FR Doc. 80-18959 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[S.O. No. 1316-A]

Chicago & North Western Transportation Co. Authorized To Operate Over Tracks of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. at Appleton, Wis.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1316-A.

SUMMARY: This order vacates Service Order No. 1316, which permitted the Chicago and North Western Railroad to operate over tracks formerly operated by the Milwaukee Railroad, and which authority is now in Service Order No. 1474.

EFFECTIVE DATE: 11:59 p.m., June 19, 1980.

FOR FURTHER INFORMATION CONTACT:

M. F. Clemens, Jr. (202) 275-7840.

Decided June 18, 1980.

Upon further consideration of Service Order No. 1316, (43 FR 14668, 28497, 39796, 51024; and 44 FR 3715 and 42974), which authority is now continued in Service Order No. 1474, and good cause appearing therefor:

It is ordered,

§ 1033.1316 Service order No. 1316.

Chicago and North Western Transportation Company authorized to operate over tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Appleton, Wisconsin is vacated effective 11:59 p.m., June 19, 1980.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18962 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[S.O. No. 1399-A]

Pend Oreille Valley Railroad, Inc. Authorized To Operate Over Tracks Formerly Operated by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1399-A.

SUMMARY: This order vacates revised Service Order No. 1399, which permitted the Pend Oreille Valley Railroad to operate over tracks formerly operated by the Milwaukee Railroad, and which authority is now in Service Order No. 1474.

EFFECTIVE DATE: 11:59 p.m., June 19, 1980.

FOR FURTHER INFORMATION CONTACT:

M. F. Clemens, Jr. (202) 275-7840.

Decided June 18, 1980.

Upon further consideration of Revised service order No. 1399, (45 FR 23698 and 29841), which authority is now contained in Service Order No. 1474, and good cause appearing therefor:

It is ordered,

§ 1033.1399 Revised Service Order No. 1399.

Pend Oreille Valley Railroad, Inc. authorized to operate over tracks formerly operated by Chicago, Milwaukee, St. Paul and Pacific Railroad Company is vacated effective 11:59 p.m., June 19, 1980.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18961 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[S.O. No. 1426-A]

Chicago, Madison & Northern Railway Co. Authorized To Operate Over Tracks Abandoned by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1426-A.

SUMMARY: This order vacates Service Order No. 1426, which permitted the Chicago, Madison and Northern to operate over tracks formerly operated by the Milwaukee Railroad, and which authority is now in Service Order No. 1474.

EFFECTIVE DATE: 11:59 p.m., June 19, 1980.

FOR FURTHER INFORMATION CONTACT:

M. F. Clemens, Jr. (202) 275-7840.

Decided June 18, 1980.

Upon further consideration of Service Order No. 1426 (45 FR 13737), which authority is now in Service Order No. 1474, and good cause appearing therefor:

It is ordered,

§ 1033.1426 Service order No. 1426.

Chicago, Madison and Northern Railway Company authorized to operate over tracks abandoned by Chicago, Milwaukee, St. Paul and Pacific Railroad Company is vacated effective 11:59 p.m., June 19, 1980.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18968 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[S.O. No. 1427-A]

Chicago, Madison & Northern Railway Co. Authorized To Operate Over Tracks Leased From the State of Wisconsin

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1427-A.

SUMMARY: This order vacates Service Order No. 1427, which permitted the Chicago, Madison and Northern to operate over tracks formerly operated by the Milwaukee Railroad, and which authority is now in Service Order No. 1474.

EFFECTIVE DATE: 11:59 p.m., June 19, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

Decided June 18, 1980.

Upon further consideration of Service Order No. 1427, (45 F.R. 13738), which authority is now in Service Order No. 1474, and good cause appearing therefor:
It is ordered,

§ 1033.1427 Service order No. 1427.

Chicago, Madison and Northern Railway Company authorized to operate over tracks leased from the state of Wisconsin is vacated effective 11:59 p.m., June 19, 1980.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18957 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR 1033

[S.O. No. 1428-A]

Southeastern Wisconsin Transportation Corp. d.b.a. Wisconsin Central Railroad Co. Authorized To Operate Over Tracks Abandoned by Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1428-A.

SUMMARY: This order vacates Service Order No. 1428, which permitted the Wisconsin Central to operate over tracks formerly operated by the Milwaukee Railroad, and which authority is now in Service Order No. 1474.

EFFECTIVE DATE: 11:59 p.m., June 19, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

Decided June 18, 1980.

Upon further consideration of Service Order No. 1428 (45 FR 13736), which authority is now in Service Order No. 1474, and good cause appearing therefor:
It is ordered,

§ 1033.1428 Service order No. 1428.

Southeastern Wisconsin Transportation Corp. d.b.a. Wisconsin Central Railroad Company authorized to operate over tracks abandoned by Chicago, Milwaukee, St. Paul and Pacific Railroad Company is vacated effective 11:59 p.m., June 19, 1980.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18956 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[S.O. No. 1463-A]

Chippewa River Railroad Co. Authorized To Operate Over Tracks Leased From the State of Wisconsin

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1463-A.

SUMMARY: This order vacates Service Order No. 1463, which permitted the Chippewa River Railroad to operate over tracks formerly operated by the Milwaukee Railroad, and which authority is now in Service Order No. 1474.

EFFECTIVE DATE: 11:59 p.m., June 19, 1980.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

Decided June 18, 1980.

Upon further consideration of Service Order No. 1463, (45 FR 23693), which authority is now in Service Order No. 1474, and good cause appearing therefor:
It is ordered,

§ 1033.1463 Service order No. 1463.

Chippewa River Railroad Company Authorized To Operate Over Tracks Leased From the State of Wisconsin is vacated effective 11:59 p.m., June 19, 1980.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18960 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

(Rev. S.O. No. 1467)

The Atchison, Topeka & Santa Fe Railway Co. Authorized To Operate Over Tracks Authorized To Be Served by the St. Louis Southwestern Railway Co., at Dodge City, Kans.**AGENCY:** Interstate Commerce Commission.**ACTION:** Revised Service Order No. 1467.

SUMMARY: This order authorizes the Atchison, Topeka and Santa Fe Railway Company (ATSF) to operate over lines of the Chicago, Rock Island and Pacific Railroad Company (RI) in lieu of the St. Louis Southwestern Railway Company (SSW) at Dodge City, Kansas, due to SSW's inability to reach Dodge City because of deteriorated track. SSW has agreed to act as the principal carrier with the Rock Island Trustee in terms of compensation.

Due to administrative error this order was decided on May 30, 1980, but omitted from service.

EFFECTIVE DATE: 11:59 p.m., May 31, 1980, and will continue in effect until otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

Decided May 30, 1980.

The St. Louis Southwestern Railway Company (SSW) is authorized to provide service over the "Tucumcari line" of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (RI) under authority of Service Order No. 1473. The line also includes the RI branch line from Bucklin to Dodge City, Kansas, a distance of 26.5 miles.

The SSW is unable to provide service to shippers at Dodge City, Kansas, due to poor track conditions between Bucklin and Dodge City making it impossible for the SSW to operate between these two points. The SSW has requested the Atchison, Topeka and Santa Fe Railway Company (ATSF) to serve these shippers at Dodge City, and the ATSF has agreed to operate over these tracks in order to provide continued rail service to the shippers.

It is the opinion of the Commission that an emergency exists requiring the operation of ATSF trains over these tracks of the SSW in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1467 Revised service order No. 1467.

(a) *The Atchison, Topeka and Santa Fe Railway Company To Operate Over Tracks Authorized To Be Served by the St. Louis Southwestern Railway Company, at Dodge City, Kansas.* The Atchison, Topeka and Santa Fe Railway Company (ATSF) is authorized to operate over tracks which are authorized to be served by the St. Louis Southwestern Railway Company (SSW), at Dodge City, Kansas, for the purpose of providing continued rail service to shippers located adjacent to these tracks.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) The SSW has agreed to pay any compensation owing to the RI Trustee as a result of this service by the ATSF.

(d) *Effective date.* This order shall become effective at 11:59 p.m., May 31, 1980.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1980, unless otherwise modified, amended or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11123.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18968 Filed 6-23-80; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Part 1033

(S.O. No. 1476)

Missouri-Kansas-Texas Railroad Co. Authorized To Operate Over Tracks of Southern Pacific Transportation Co. Near Houston, Tex.**AGENCY:** Interstate Commerce Commission.**ACTION:** Service Order No. 1476.

SUMMARY: Missouri-Kansas-Texas Railroad Company (MKT) operates

numerous grain trains which contain large amounts of traffic to be delivered by the Southern Pacific Transportation Company (SP) at Houston. This traffic is presently encountering serious delays due to congestion in the Houston terminal. This shortage of yard space necessitates the holding of trains short of destination.

The SP has consented to the use of its tracks by the MKT between Tower 108 and Basin Siding Yard (MP-5), a distance of approximately 8.9 miles near Houston, Texas. This use of SP tracks by MKT will result in fuel savings, more efficient operations, and considerably improved utilization of grain cars.

The MKT will be permitted to use these trackage rights in order to expedite grain traffic to interchange with SP and will not perform any local freight service at any point on this trackage.

EFFECTIVE DATE: 12:01 a.m., June 20, 1980, and continuing in effect until 11:59 p.m., September 30, 1980, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

Decided June 18, 1980.

Missouri-Kansas-Texas Railroad Company (MKT) operates numerous grain trains which contain large amounts of traffic to be delivered by the Southern Pacific Transportation Company (SP) at Houston. This traffic is presently encountering serious delays due to congestion in the Houston terminal. This shortage of yard space necessitates the holding of trains short of destination.

The SP has consented to the use of its tracks by the MKT between Tower 108 and Basin Siding Yard (MP-5), a distance of approximately 8.9 miles near Houston, Texas. This use of SP tracks by MKT will result in fuel savings, more efficient operations, and considerably improved utilization of grain cars.

The MKT will be permitted to use these trackage rights in order to expedite grain traffic to interchange with SP and will not perform any local freight service at any point on this trackage.

It is the opinion of the Commission that an emergency exists requiring operating MKT trains over tracks of SP in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1476 Service order No. 1476.

(a) *Missouri-Kansas-Texas Railroad Company Authorized to Operate Over Tracks of Southern Pacific Transportation Company Near Houston, Texas.* The Missouri-Kansas-Texas Railroad Company (MKT) is authorized to operate over tracks of Southern Pacific Transportation Company (SP) between Tower 108 and Basin Siding Yard near Houston, Texas, a distance approximately 8.9 miles.

The MKT is authorized to use these tracks in order to expedite grain traffic to interchange with SP and will not perform any local freight service at any point on this trackage.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) Nothing herein shall be considered as a prejudgment of any application by MKT seeking permanent authority to operate over these tracks.

(d) *Effective date.* This order shall become effective at 12:01 a.m., June 20, 1980.

(e) *Expiration.* The provisions of this order shall expire at 11:59 p.m., September 30, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John H. O'Brien.

James H. Bayne,

Acting Secretary.

[FR Doc. 80-18060 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5838]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland
20034, Phone: (800) 638-6620

FOR FURTHER INFORMATION CONTACT:
Mr. Richard Krimm, National Flood

Insurance Program, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Louisiana	Webster	Sibley, town of	220258	May 16, 1980, emergency	Feb. 7, 1975
Texas	Uvalde	Unincorporated areas	480629A	do	Jan. 24, 1978
Oklahoma	Seminole	Bowlegs, town of	400468A	May 20, 1980, emergency	May 2, 1978
Pennsylvania	Northampton	Chapman, borough of	422251	do	Nov 15, 1974
Oklahoma	Pottawatomie and Seminole	Maud, town of	400401	May 21, 1980, emergency	Apr 2, 1976
Wyoming	Laramie	Unincorporated areas	560029A	May 21, 1980, emergency; May 21, 1980, regular	Nov 15, 1977
Mississippi	Walthall	do	280307	May 20, 1980, emergency	Feb. 24, 1978
New York	Schoharie	Summit, town of	361201	do	Mar. 31, 1978
Texas	Lamar	Blossom, city of	480892	May 27, 1980, emergency	Aug. 13, 1976
Indiana	Lake	Lowell, town of	180137B	Jan. 31, 1975, emergency; Dec. 4, 1979, regular; Dec. 4, 1979, suspended; May 23, 1980, reinstated.	Dec. 28, 1973 and Jan. 9, 1976
Florida	Union	Worthington Springs, town of	120594A	May 29, 1980, emergency	Oct. 31, 1978
New York	St. Lawrence	Rensselaer Falls, village of	361466A	do	June 3, 1977
Do	Clinton	Keesville, village of	360266A	do	May 31, 1974 and May 21, 1976

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 2, 1980.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 80-18788 Filed 6-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 5840]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plan management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed

property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at:

P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line 800-424-8872, Room 5150, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special

flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Alabama	Madison County	Huntsville, city of	010153	740308 emerg., 791101 reg.	740524
Alabama	Marion County	Winfield, city of	010164	740123 emerg., 791101 reg.	740510
California	Merced County	Atwater, city of	060189	750522 emerg., 791101 reg.	740503
California	San Mateo County	Colma, city of	060316	720331 emerg., 791101 reg.	730914
Connecticut	Litchfield County	Bridgewater, town of	090184	751111 emerg., 791101 reg.	741206
Connecticut	Middlesex County	East Haddam, town of	090063	750210 emerg., 791101 reg.	740623
Connecticut	New London County	Stonington, borough of	090193	760504 emerg., 791101 reg.	771129
Connecticut	New Haven County	Waterbury, city of	090091	750523 emerg., 791101 reg.	740322
Florida	Orange County	Winter Park, city of	120186	740528 emerg., 791101 reg.	741018
Georgia	Fulton County	Palmato, city of	130230	750926 emerg., 791101 reg.	740614
Illinois	Jackson County	Carbondale, city of	170296	750114 emerg., 791101 reg.	740503
Illinois	St. Clair County	East St. Louis, city of	170826	730501 emerg., 791101 reg.	731116
Illinois	Will County	Frankfort, village of	170701	740411 emerg., 791101 reg.	0
Illinois	Cook County	Lyons, village of	170120	740911 emerg., 791101 reg.	740315
Illinois	Peoria County	Peoria Heights, village of	170537	721013 emerg., 791101 reg.	731116
Illinois	Will County	Shorewood, village of	170712	740515 emerg., 791101 reg.	740405
Indiana	Elkhart County	Elkhart County*	180056	730209 emerg., 791101 reg.	0
Indiana	Lake County	St. John, town of	180141	750120 emerg., 791101 reg.	731130
Iowa	Polk County	Clive, city of	190486	770825 emerg., 791101 reg.	770531
Iowa	Scott County	Princeton, city of	190244	740730 emerg., 791101 reg.	740301
Iowa	Cedar County	Stanwood, city of	190056	790614 emerg., 791101 reg.	740809
Iowa	Polk County	West Des Moines, city of	190231	740725 emerg., 791101 reg.	740626
Kansas	Rice County	Alden, city of	200291	760106 emerg., 791101 reg.	741227
Kansas	Leavenworth County	Easton, city of	200188	750702 emerg., 791101 reg.	760709
Kansas	Harvey County	Hesston, city of	200132	750424 emerg., 791101 reg.	740626
Kansas	Riley County	Riley, city of	200303	751226 emerg., 791101 reg.	740215
Kansas	Leavenworth County	Tonganoxie, city of	200192	750611 emerg., 791101 reg.	740607
Maryland	Caroline County	Greensboro, town of	240014	741227 emerg., 791101 reg.	740626
Michigan	Genesee County	Flint, township of	260395	761026 emerg., 791101 reg.	770610
Michigan	Berrien County	Lake, township of	260036	730726 emerg., 791101 reg.	740626
Michigan	Genesee County	Mundy, township of	260401	760729 emerg., 791101 reg.	751003
Michigan	Genesee County	Swartz Creek, city of	260060	750623 emerg., 791101 reg.	740517
Minnesota	Wright County	Clearwater, city of	270536	750730 emerg., 791101 reg.	740823
Minnesota	Sibley County	Henderson, city of	270440	750319 emerg., 791101 reg.	740524
Minnesota	Mille Lacs County	Isle, city of	270286	740516 emerg., 791101 reg.	740607
Minnesota	Le Sueur County	Kasota, city of	270247	750428 emerg., 791101 reg.	740607
Minnesota	Wright County	Monticello, city of	270541	750410 emerg., 791101 reg.	740524
Minnesota	Anoka County	Ramsey, city of	270681	750708 emerg., 791101 reg.	780421
Minnesota	Hennepin County	Rockford, city of	270182	750205 emerg., 791101 reg.	731109
Minnesota	Wright County	St. Michael, city of	270543	750616 emerg., 791101 reg.	740517
Minnesota	DeKalb County	Vermillion, city of	270115	751006 emerg., 791101 reg.	740809
Minnesota	Hennepin County	Wayzata, city of	270188	741125 emerg., 791101 reg.	740621
Mississippi	Leflore County	Leflore County*	280101	730828 emerg., 791101 reg.	790112
Mississippi	Yazoo County	Sartoria, town of	280205	740823 emerg., 791101 reg.	740823
Missouri	Cass County	Harrisonville, city of	290068	750701 emerg., 791101 reg.	740315
Missouri	Jackson County	Lake Lotawana, city of	290687	761110 emerg., 791101 reg.	761119
Missouri	Marion County	Vienna, city of	290647	760310 emerg., 791101 reg.	750207
Missouri	St. Louis County	Warson Woods, town of	290393	740130 emerg., 791101 reg.	740109
Nebraska	Lincoln County	North Platte, city of	310143	740114 emerg., 791101 reg.	740201
Nebraska	Dodge County	Scribner, city of	310071	750530 emerg., 791101 reg.	740628

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Nebraska	Dodge County	Snyder, village of	310319	760816 emerg., 791101 reg.	750627
North Carolina	Gaston County	Belmont, city of	370320	760326 emerg., 791101 reg.	750627
North Carolina	Guilford County	High Point, city of	370113	740805 emerg., 791101 reg.	740628
North Carolina	Davidson County	Lexington, city of	370081	750710 emerg., 791101 reg.	740621
North Carolina	Rowan County	Rowan County*	370351	760823 emerg., 791101 reg.	780728
North Dakota	Dickey County	Oakes, city of	360246	750722 emerg., 791101 reg.	750214
Oklahoma	Cleveland County	Norman, city of	400048	740823 emerg., 791101 reg.	740823
Oklahoma	Cherokee County	Tahlequah, city of	400037	750513 emerg., 791101 reg.	740614
Pennsylvania	Lehigh County	Catasqueque, borough of	420586	711203 emerg., 791101 reg.	731130
Pennsylvania	Allegheny County	Liberty, borough of	420048	750813 emerg., 791101 reg.	731228
Pennsylvania	Lackawanna County	Moosic, borough of	420533	721117 emerg., 791101 reg.	730831
Pennsylvania	Washington County	Peters, township of	422152	750729 emerg., 791101 reg.	750110
Pennsylvania	Dauphin County	Reed, township of	420393	730404 emerg., 791101 reg.	740109
Pennsylvania	Clinton County	Wayne, township of	420336	740603 emerg., 791101 reg.	731026
Pennsylvania	Montgomery County	West Pottsgrove, township of	421133	740308 emerg., 791101 reg.	740920
Pennsylvania	Delaware County	Yeadon, borough of	420442	740919 emerg., 791101 reg.	740628
Texas	Collin County	Celina, city of	480133	750527 emerg., 791101 reg.	740412
Texas	Collin County	Fairview, town of	481069	770118 emerg., 791101 reg.	750110
Virginia	Fauquier County	Fauquier County*	510055	750318 emerg., 791101 reg.	741213
Virginia	Smyth County	Marion, town of	510223	741024 emerg., 791101 reg.	0
Virginia	Scott County	Scott County*	510142	740211 emerg., 791101 reg.	780310
Wisconsin	Sawyer County	Hayward, city of	550410	731004 emerg., 791101 reg.	740628
New Jersey	Atlantic County	Northfield, city of	340014	740729 emerg., 791102 reg.	740628
New Jersey	Burlington County	Pemberton, borough of	340111	791105 emerg., 791105 reg.	760820
Louisiana	Avoyelles Parish	Bunkie, town of	220020	730517 emerg., 791106 reg.	760723
Missouri	Clay County	Oakview, village of	290695	761123 emerg., 791106 reg.	760716
Washington	Spokane County	Cheney, city of	530175	750501 emerg., 791106 reg.	760521
Illinois	Cook County	La Grange, village of	170114	730330 emerg., 791109 reg.	741129
Indiana	Knox County	Decker, town of	180322	750804 emerg., 791109 reg.	740201
Michigan	Eaton County	Oliver, city of	260069	750903 emerg., 791109 reg.	740617
Ohio	Miami County	Piqua, city of	390400	750527 emerg., 791109 reg.	740628
Wisconsin	Outagamie County	Seymour, city of	550534	750218 emerg., 791109 reg.	741129
New Mexico	Union County	Ceylon, town of	350084	741017 emerg., 791113 reg.	740631
Arkansas	Union County	El Dorado, city of	050207	741025 emerg., 791115 reg.	740503
California	Los Angeles County	Athens, city of	060095	750807 emerg., 791115 reg.	740628
California	Yolo County	Davis, city of	060424	790731 emerg., 791115 reg.	771108
California	Alameda County	Piedmont, city of	060011	730913 emerg., 791115 reg.	740628
California	San Mateo County	Woodside, town of	060330	720218 emerg., 791115 reg.	740614
Colorado	Weld County	Pierce, town of	060189	750717 emerg., 791115 reg.	741129
Florida	Brevard County	Melbourne Village, town of	120329	740826 emerg., 791115 reg.	740215
Florida	Brevard County	Rockledge, city of	120027	740618 emerg., 791115 reg.	740301
Idaho	Bingham County	Bingham County*	160018	740625 emerg., 791115 reg.	780620
Idaho	Benewah County	St. Maries, city of	160016	740613 emerg., 791115 reg.	740215
Illinois	Cook County	Chicago Heights, city of	170075	741202 emerg., 791115 reg.	740412
Illinois	Cook County	Golf, village of	170098	750117 emerg., 791115 reg.	740329
Illinois	McHenry County	Harvard, city of	170479	740723 emerg., 791115 reg.	740624
Illinois	Cook County	Rosemont, village of	170156	721124 emerg., 791115 reg.	740719
Illinois	Du Page County	West Chicago, city of	170219	750707 emerg., 791115 reg.	740412
Indiana	Clerk County	Charlestown, city of	180025	751016 emerg., 791115 reg.	740412
Indiana	Hendricks County	Danville, town of	180068	750310 emerg., 791115 reg.	731217
Maine	Kennebec County	Hallowell, city of	230069	750113 emerg., 791115 reg.	740201
Maine	Piscataquis County	Sengerville, town of	230413	750717 emerg., 791115 reg.	750207
Massachusetts	Worcester County	Northborough, town of	250321	750610 emerg., 791115 reg.	741129
Massachusetts	Plymouth County	Pembroke, town of	250277	740114 emerg., 791115 reg.	740726
Michigan	Berrien County	Bridgeport, city of	260033	730302 emerg., 791115 reg.	740607
Michigan	Bay County	Frankenmuth, township of	260022	730330 emerg., 791115 reg.	761028
Minnesota	Anoka County	Blaine, city of	270007	740611 emerg., 791115 reg.	740628
Mississippi	Madison County	Canton, city of	280109	740809 emerg., 791115 reg.	740607
Mississippi	Warren County	Warren County*	280198	731226 emerg., 791115 reg.	760505
New Jersey	Bergen County	Elmwood Park, Borough of	340500	720526 emerg., 791115 reg.	740104
New Jersey	Morris County	Rockaway, township of	340360	720726 emerg., 791115 reg.	740116
New York	Westchester County	Eastchester, town of	360909	740703 emerg., 791115 reg.	740510
Ohio	Hamilton County	Fairfax, village of	390215	740912 emerg., 791115 reg.	750131
Ohio	Hamilton County	Madiera, city of	390225	740919 emerg., 791115 reg.	750207
Pennsylvania	Montgomery County	Hatfield, township of	420699	720421 emerg., 791115 reg.	740726
Pennsylvania	Juniper County	Mifflintown, borough of	420519	750624 emerg., 791115 reg.	740322
Pennsylvania	Allegheny County	Osborne, borough of	420061	730216 emerg., 791115 reg.	730601
Texas	Dallas County	University Park, city of	480189	750312 emerg., 791115 reg.	740524
Texas	Bosque County	Valley Mills, city of	480054	750731 emerg., 791115 reg.	740503
Utah	Carbon County	Carbon County*	490032	741127 emerg., 791115 reg.	770614
Washington	Pacific County	South Bend, city of	530130	741016 emerg., 791115 reg.	740628
North Dakota	Stutsman County	Kensal, city of	360123	760121 emerg., 791120 reg.	741220
North Dakota	Barnes County	Litchville, city of	380187	780411 emerg., 791120 reg.	750117
Pennsylvania	Crawford County	Spartansburg, borough of	421561	750915 emerg., 791123 reg.	760103
Arkansas	Cleburne County	Heber Springs, city of	050240	760209 emerg., 791127 reg.	750124
Missouri	Putnam County	Unionville, city of	290301	761223 emerg., 791127 reg.	760613
Oklahoma	Pontotoc County	Roff, town of	400176	771206 emerg., 791127 reg.	740322
California	Los Angeles County	Bel, city of	060101	741226 emerg., 791130 reg.	0
California	Los Angeles County	Monterey Park, city of	060547	701016 emerg., 791130 reg.	0
California	Los Angeles County	Rolling Hills Estates, city of	060504	701204 emerg., 791130 reg.	0
Illinois	De Kalb County	Cortland, village of	170181	790405 emerg., 791130 reg.	0
Iowa	Clay County	Everly, city of	190356	770331 emerg., 791130 reg.	0
New York	Orleans County	Albion, village of	360541	760511 emerg., 791130 reg.	740524
New York	Ulster County	Highland, town of	361251	750609 emerg., 791130 reg.	741101
New York	Orleans County	Holley, village of	361454	760514 emerg., 791130 reg.	750711
New York	Cattaraugus County	Salamanca, town of	360098	791203 emerg., 791203 reg.	770603
Alabama	Escambia County	East Brewton, city of	010073	750625 emerg., 791204 reg.	731123
Alabama	Marion County	Marion County	010161	751106 emerg., 791204 reg.	741018
Arizona	Maricopa County	Gila Bend, town of	040043	750516 emerg., 791204 reg.	740123
Arizona	Pima County	Oro Valley, town of	040109	750212 emerg., 791204 reg.	750411
Arizona	Maricopa County	Phoenix, city of	040051	711217 emerg., 791204 reg.	740628
Arkansas	Izard County	Calico Rock, city of	050094	750906 emerg., 791204 reg.	740322

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Arkansas	St. Francis County	Forest City, city of	050187	750505 emerg., 791204 reg	740315
California	Contra Costa County	Clayton, city of	080027	750618 emerg., 791204 reg	740517
California	Siskiyou County	Dunsmuir, city of	080363	750529 emerg., 791204 reg	740524
California	Orange County	San Clemente, city of	080230	750709 emerg., 791204 reg	740614
California	Orange County	Villa Park, city of	080236	750522 emerg., 791204 reg	740322
Connecticut	New Haven County	Oxford, town of	090150	750701 emerg., 791204 reg	740828
Connecticut	Fairfield County	Trumbull, town of	090017	740115 emerg., 791204 reg	740628
Connecticut	Tolland County	Vernon, town of	090131	730128 emerg., 791204 reg	740116
Florida	Putnam County	Interlachen, town of	120391	750724 emerg., 791204 reg	781203
Florida	Broward County	Lauderdale Lakes, city of	120043	730529 emerg., 791204 reg	740617
Florida	Putnam County	Pomona Park, town of	120418	760709 emerg., 791204 reg	780626
Georgia	Whitfield County	Dalton, city of	130194	740816 emerg., 791204 reg	740816
Illinois	Cook County	Bellwood, village of	170061	750218 emerg., 791204 reg	740807
Illinois	Rock Island County	Coal Valley, village of	170585	740929 emerg., 791204 reg	740301
Illinois	Tazewell County	East Peoria, city of	170649	750527 emerg., 791204 reg	740621
Illinois	Cook County	Indian Head Park, village of	170110	750331 emerg., 791204 reg	750405
Illinois	La Salle County	Mendota, city of	170403	741102 emerg., 791204 reg	740406
Illinois	Cook County	Oak Forest, city of	170136	730202 emerg., 791204 reg	740621
Illinois	Livingston County	Pontiac, city of	170426	750213 emerg., 791204 reg	740306
Illinois	Winnebago County	Rockford, city of	170723	730209 emerg., 791204 reg	740920
Illinois	Cook County	Tinley Park, village of	170169	740725 emerg., 791204 reg	740517
Indiana	Madison County	Anderson, city of	180150	741107 emerg., 791204 reg	740215
Indiana	Lake County	Hobart, city of	180136	750214 emerg., 791204 reg	740412
Indiana	Lake County	Lowell, town of	180137	750131 emerg., 791204 reg	731228
Indiana	Morgan County	Martinsville, city of	180177	750402 emerg., 791204 reg	731123
Indiana	Switzerland County	Patriot, town of	180309	750505 emerg., 791204 reg	770706
Indiana	Switzerland County	Vevay, town of	180352	750401 emerg., 791204 reg	740201
Kansas	Marion County	Marion, city of	200207	731003 emerg., 791204 reg	740201
Kentucky	Pike County	Coal Run, village of	210263	770414 emerg., 791204 reg	750110
Kentucky	Pike County	Pike County*	210298	770720 emerg., 791204 reg	770909
Louisiana	East Feliciana Parish	Clinton, town of	220249	760603 emerg., 791204 reg	750718
Maine	Piscataquis County	Milo, town of	230177	750716 emerg., 791204 reg	750110
Maine	Oxford County	Porter, town of	230338	761007 emerg., 791204 reg	750207
Massachusetts	Norfolk County	Foxborough, town of	250239	750620 emerg., 791204 reg	740726
Michigan	Berrien County	New Buffalo, city of	260038	730410 emerg., 791204 reg	740531
Michigan	Berrien County	New Buffalo, township of	260039	750422 emerg., 791204 reg	740726
Minnesota	Anoka County	Centerville, city of	270008	750306 emerg., 791204 reg	740503
Minnesota	Hennepin County	Shorewood, city of	270185	750408 emerg., 791204 reg	740531
Minnesota	Roseau County	Warroad, city of	270415	740703 emerg., 791204 reg	740524
Missouri	New Madrid County	Portageville, city of	290259	740517 emerg., 791204 reg	740109
Nebraska	Douglas County	Bennington, village of	310074	750710 emerg., 791204 reg	740201
Nebraska	Johnson County	Tecumseh, city of	310127	750506 emerg., 791204 reg	740123
Nebraska	Dodge County	Winslow, village of	310410	750307 emerg., 791204 reg	740823
New Jersey	Essex County	Irvington, town of	340184	731005 emerg., 791204 reg	731228
New Jersey	Middlesex County	Metuchen, borough	340266	720114 emerg., 791204 reg	761105
New Jersey	Middlesex County	New Brunswick, city of	340270	720915 emerg., 791204 reg	730615
New Jersey	Middlesex County	South Amboy, city of	340277	740927 emerg., 791204 reg	740201
New Jersey	Somerset County	Watchung, borough of	340447	730917 emerg., 791204 reg	740201
New York	Westchester County	Bedford, town of	360903	730525 emerg., 791204 reg	740531
New York	Albany County	Cohoes, city of	360006	730525 emerg., 791204 reg	731005
New York	Livingston County	North Dansville, town of	360388	730417 emerg., 791204 reg	731228
New York	Saratoga County	Waterford, town of	360734	740726 emerg., 791204 reg	740329
North Dakota	Cass County	Hunter, city of	380181	751223 emerg., 791204 reg	750221
Ohio	Montgomery County	Dayton, city of	390409	740924 emerg., 791204 reg	740315
Ohio	Ashtabula County	Geneva-on-the-Lake, village of	390658	750329 emerg., 791204 reg	740405
Ohio	Lake County	Madison, village of	390316	750826 emerg., 791204 reg	740510
Ohio	Lake County	Willowick, city of	390324	760218 emerg., 791204 reg	750815
Oklahoma	Muskogee County	Haskell, town of	400124	750807 emerg., 791204 reg	740412
Oregon	Marion County	Gates, city of	410159	780509 emerg., 791204 reg	760702
Oregon	Clackamas County	Happy Valley, city of	410026	750528 emerg., 791204 reg	741220
Oregon	Jackson County	Jacksonville, city of	410095	750404 emerg., 791204 reg	740621
Pennsylvania	Lebanon County	Jonestown, borough of	420572	721229 emerg., 791204 reg	730330
Pennsylvania	Lebanon County	Lebanon, city of	420573	730126 emerg., 791204 reg	731123
Pennsylvania	Cumberland County	Lemoine, borough of	420361	730522 emerg., 791204 reg	770114
Pennsylvania	Bucks County	Middletown, township of	420193	721006 emerg., 791204 reg	740531
Pennsylvania	Beaver County	Monaca, borough of	420114	740702 emerg., 791204 reg	740329
Pennsylvania	Cumberland County	Monroe, township of	420364	720225 emerg., 791204 reg	731128
Pennsylvania	Schuylkill County	Pine Grove, borough of	420781	730417 emerg., 791204 reg	731005
Pennsylvania	Northampton County	Stockertown, borough of	420730	750825 emerg., 791204 reg	740802
Pennsylvania	Northampton County	Tatamy, borough of	420731	750830 emerg., 791204 reg	740412
Pennsylvania	Lebanon County	Union, township of	421806	741010 emerg., 791204 reg	741213
Tennessee	Sullivan County	Kingsport, city of	470184	741015 emerg., 791204 reg	740308
Texas	Collin County	Richardson, city of	480184	750220 emerg., 791204 reg	740524
Utah	Sevier County	Aurora, town of	490123	760126 emerg., 791204 reg	750131
Utah	Garfield County	Tropic, town of	490071	750903 emerg., 791204 reg	750207
Vermont	Windsox County	Springfield, town of	500154	750617 emerg., 791204 reg	740222
Washington	Cowlitz County	Kelso, city of	530033	720728 emerg., 791204 reg	740215
Washington	Lewis County	Morton, city of	530105	750604 emerg., 791204 reg	740524
West Virginia	Jefferson County	Charles Town, city of	540066	750424 emerg., 791204 reg	740201
Wisconsin	Fond du Lac County	North Fond du Lac, village of	550138	750327 emerg., 791204 reg	740109
Montana	Cascade County	Belt, town of	300009	750513 emerg., 791205 reg	740315
North Dakota	Griggs County	Cooperstown, city of	360219	760227 emerg., 791211 reg	750221
Oregon	Clackamas County	Sandy, city of	410023	740625 emerg., 791211 reg	740412
Texas	Harris County	Houston, city of	480296	730914 emerg., 791211 reg	741227
Alabama	Baldwin County	Silverhill, town of	010010	760428 emerg., 791214 reg	740628
Illinois	Franklin County	Benton, city of	170237	750403 emerg., 791214 reg	740628
Kentucky	Garrard County	Lancaster, city of	210082	750429 emerg., 791214 reg	740719
Kentucky	Anderson County	Lawrenceburg, city of	210003	750821 emerg., 791214 reg	740816
Michigan	Cass County	Vandalla, village of	260370	760706 emerg., 791214 reg	750711
Ohio	Jefferson County	Bergholz, village of	390695	760826 emerg., 791214 reg	750725
Ohio	Portage County	Windham, village of	390459	761014 emerg., 791214 reg	740315
Pennsylvania	Dauphin County	Gatz, borough of	421591	760211 emerg., 791214 reg	741220

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Pennsylvania	Cumberland County	Newville, borough of	421579	760921 emerg., 791214 reg.	750131
Pennsylvania	Carbon County	Summit Hill, borough of	421451	750723 emerg., 791214 reg.	750117
Pennsylvania	Erie County	Wayne, township of	421373	750306 emerg., 791214 reg.	741213
Pennsylvania	Lebanon County	West Cornwall, township of	420583	730323 emerg., 791214 reg.	760730
Massachusetts	Middlesex County	Hudson, town of	250197	750806 emerg., 791215 reg.	740726
Texas	Fort Bend County	Meadows Municipal Utility District	481563	791217 emerg., 791217 reg.	0
Alabama	Mobile County	Saraland, city of	010171	740509 emerg., 791218 reg.	740524
Arkansas	Garland County	Hot Springs, city of	050084	711112 emerg., 791218 reg.	741220
California	San Luis Obispo County	Morro Bay, city of	060307	740215 emerg., 791218 reg.	740531
California	Los Angeles County	Torrance, city of	060165	750626 emerg., 791218 reg.	740602
Colorado	Weld County	Firestone, town of	080241	761026 emerg., 791218 reg.	750919
Florida	Putnam County	Crescent City, city of	120408	751128 emerg., 791218 reg.	761203
Idaho	Latah County	Bovill, city of	160202	760203 emerg., 791218 reg.	760702
Idaho	Latah County	Genesee, city of	160087	741102 emerg., 791218 reg.	760409
Idaho	Shoshone County	Smelterville, city of	180117	750625 emerg., 791218 reg.	760430
Idaho	Latah County	Troy, city of	160091	750130 emerg., 791218 reg.	740510
Illinois	Cook County	Northfield, village of	170133	740918 emerg., 791218 reg.	740329
Kansas	Shawnee County	Rossville, city of	200334	750811 emerg., 791218 reg.	740109
Kansas	Wyandotte County	Wyandotte County*	200562	750307 emerg., 791218 reg.	770506
Louisiana	Ouachita Parish	Monroe, city of	220136	740906 emerg., 791218 reg.	740906
Maine	York County	Parsonfield, town of	230154	761013 emerg., 791218 reg.	740628
Maryland	Caroline County	Denton, town of	240104	740924 emerg., 791218 reg.	760213
Maryland	Allegany County	Frostburg, city of	240004	750417 emerg., 791218 reg.	740920
Massachusetts	Middlesex County	Waltham, city of	250222	750701 emerg., 791218 reg.	740628
Michigan	Clinton County	De Witt, city of	260060	750711 emerg., 791218 reg.	740306
Michigan	Genesee County	Gaines, township of	260293	740503 emerg., 791218 reg.	750131
Michigan	Allegan County	Ganges, township of	260005	731024 emerg., 791218 reg.	740628
Minnesota	Itasca County	Grand Rapids, city of	270204	740522 emerg., 791218 reg.	731026
Minnesota	Norman County	Hendrum, city of	270325	740705 emerg., 791218 reg.	740609
Minnesota	Brown County	New Ulm, city of	270036	740211 emerg., 791218 reg.	731102
Missouri	Platte County	Platte County*	290475	740325 emerg., 791218 reg.	0
New Jersey	Warren County	Belvidere, town of	340481	741112 emerg., 791218 reg.	740628
New Jersey	Burlington County	Maple Shade, township of	340101	750711 emerg., 791218 reg.	740315
New Jersey	Middlesex County	Perth Amboy, city of	340272	750625 emerg., 791218 reg.	740621
New Jersey	Morris County	Randolph, township of	340358	730823 emerg., 791218 reg.	740215
New Jersey	Middlesex County	Spotswood, borough of	340282	731031 emerg., 791218 reg.	730706
New Jersey	Union County	Westfield, town of	340478	740924 emerg., 791218 reg.	0
North Carolina	Catawba County	Brookford, town of	370051	750724 emerg., 791218 reg.	740906
Ohio	Montgomery County	Trotwood, city of	380417	740702 emerg., 791218 reg.	740215
Oklahoma	Custer County	Weatherford, city of	400056	750207 emerg., 791218 reg.	740329
Pennsylvania	Allegheny County	Aspinwall, borough of	420005	750411 emerg., 791218 reg.	731228
Pennsylvania	Berks County	Birdsboro, borough of	420127	721229 emerg., 791218 reg.	731026
Pennsylvania	Bucks County	Bristol, borough of	420183	720915 emerg., 791218 reg.	731005
Pennsylvania	Clinton County	Chapman, township of	420323	730829 emerg., 791218 reg.	740301
Pennsylvania	Lackawanna County	Clarks Summit, borough of	420527	730416 emerg., 791218 reg.	741115
Pennsylvania	Perry County	Duncannon, borough of	420749	721020 emerg., 791218 reg.	730720
Pennsylvania	Washington County	Houston, borough of	422594	741024 emerg., 791218 reg.	740412
Pennsylvania	Lackawanna County	Jermyn, borough of	420530	740809 emerg., 791218 reg.	740109
Pennsylvania	Lancaster County	Lancaster, township of	420553	730309 emerg., 791218 reg.	730713
Pennsylvania	Bucks County	Newtown, borough of	420196	750205 emerg., 791218 reg.	740322
Pennsylvania	Bucks County	Newtown, township of	421084	760316 emerg., 791218 reg.	780310
Pennsylvania	Allegheny County	Ross, township of	420979	731024 emerg., 791218 reg.	740607
Pennsylvania	Wyoming County	Tunkhannock, borough of	420917	730418 emerg., 791218 reg.	730607
Pennsylvania	Perry County	Wheatfield, township of	421035	711029 emerg., 791218 reg.	740726
Pennsylvania	York County	Wrightsville, borough of	420943	730606 emerg., 791218 reg.	730914
Pennsylvania	York County	York Haven, borough of	420946	780413 emerg., 791218 reg.	740123
Washington	Cowlitz County	Longview, city of	530034	720526 emerg., 791218 reg.	740628
West Virginia	Berkeley County	Martinsburg, city of	540006	741114 emerg., 791218 reg.	740607
Washington	Spokane County	Deer Park, city of	530176	750703 emerg., 791226 reg.	740405
California	Santa Clara County	Los Altos Hills, town of	060342	740306 emerg., 800102 reg.	740524
Georgia	Douglas County	Douglas County*	130306	750131 emerg., 800102 reg.	760305
Illinois	Du Page County	Darien, city of	170750	740906 emerg., 800102 reg.	741129
Illinois	Lake County	Lindenhurst, village of	170379	741227 emerg., 800102 reg.	740405
Illinois	Lake County	Round Lake Heights, village of	170390	740805 emerg., 800102 reg.	740329
Illinois	Winnebago County	South Beloit, city of	170725	740325 emerg., 800102 reg.	740607
Indiana	Hamilton County	Cicero, town of	180320	750324 emerg., 800102 reg.	740201
Indiana	Lake County	New Chicago, town of	180140	750313 emerg., 800102 reg.	740531
Kansas	Douglas County	Baldwin City, city of	200088	750623 emerg., 800102 reg.	740215
Maryland	Washington County	Keedysville, town of	240075	750321 emerg., 800102 reg.	740726
Maryland	Washington County	Sharpsburg, town of	240076	750918 emerg., 800102 reg.	770325
Massachusetts	Hampshire County	Granby, town of	250162	750703 emerg., 800102 reg.	740906
Minnesota	Kitson County	Hallock, city of	270226	740703 emerg., 800102 reg.	740517
Minnesota	Roseau County	Roseau County*	270633	740426 emerg., 800102 reg.	761126
Mississippi	Madison County	Madison County*	280228	750717 emerg., 800102 reg.	780811
Mississippi	Newton County	Newton County*	280231	790423 emerg., 800102 reg.	770916
New Jersey	Essex County	Essex Fells, borough of	340575	750728 emerg., 800102 reg.	761203
New Jersey	Camden County	Runnemede, borough of	340144	730807 emerg., 800102 reg.	731207
New York	Albany County	Watervliet, city of	360016	741129 emerg., 800102 reg.	740201
New York	Westchester County	White Plains, city of	360935	721020 emerg., 800102 reg.	730316
North Carolina	Transylvania County	Transylvania County*	370230	740121 emerg., 800102 reg.	780120
Ohio	Ashland County	Ashland, city of	390007	730918 emerg., 800102 reg.	740412
Ohio	Lake County	Wickliffe, city of	390321	760809 emerg., 800102 reg.	750725
Oklahoma	Sequoyah County	Sallisaw, city of	400199	740130 emerg., 800102 reg.	740405
Pennsylvania	Delaware County	Ridley Park, borough of	420430	740829 emerg., 800102 reg.	740719
Pennsylvania	Northumberland County	Watsonstown, borough of	420746	731119 emerg., 800102 reg.	740308
Texas	Collin County	Plano, city of	480140	740719 emerg., 800102 reg.	740510
West Virginia	Morgan County	Bath (Berkeley Springs), town of	540005	750520 emerg., 800102 reg.	760303
West Virginia	Mason County	Mason County*	540112	750425 emerg., 800102 reg.	750425
Louisiana	Richland County	Delhi, town of	220155	750306 emerg., 800108 reg.	740329
Oregon	Union County	Summerville, city of	410222	750328 emerg., 800115 reg.	790805
Washington	Island County	Oak Harbor, city of	530068	750505 emerg., 800115 reg.	740524
Alabama	Marion County	Hamilton, city of	010163	741210 emerg., 800116 reg.	740531
Arizona	Maricopa County	Gilbert, town of	040044	750610 emerg., 800116 reg.	740405
Arizona	Maricopa County	Tolleson, city of	040055	750218 emerg., 800116 reg.	740412
Connecticut	Middlesex County	Haddam, town of	090066	750523 emerg., 800116 reg.	740531

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Illinois	Lake County	Libertyville, village of	170377	730216 emerg., 800116 reg.	731102
Illinois	Du Page County	Willowbrook, village of	170222	740628 emerg., 800116 reg.	740517
Indiana	Switzerland County	Switzerland County *	180251	750401 emerg., 800116 reg.	740201
Iowa	Black Hawk County	Dunkerton, city of	190018	750403 emerg., 800116 reg.	740322
Iowa	Black Hawk County	Hudson, city of	190022	750801 emerg., 800116 reg.	740308
Iowa	Lake County	Marengo, city of	190157	740904 emerg., 800116 reg.	740123
Minnesota	Anoka County	Anoka County *	270005	740319 emerg., 800116 reg.	0
Minnesota	Lac Qui Parle County	Dawson, city of	270241	740515 emerg., 800116 reg.	740412
Missouri	Jefferson County	Arnold, city of	290188	731029 emerg., 800116 reg.	740628
Nebraska	Sarpy County	Bellevue, city of	310191	730413 emerg., 800116 reg.	731207
Nebraska	Sarpy County	La Vista, city of	310192	740423 emerg., 800116 reg.	740621
New York	Chemung County	Ashland, town of	360147	730209 emerg., 800116 reg.	731109
New York	Erie County	Grand Island, town of	360242	740906 emerg., 800116 reg.	740802
New York	Dutchess County	Pleasant Valley, town of	360221	750702 emerg., 800116 reg.	740726
New York	Westchester County	Port Chester, village of	360928	730620 emerg., 800116 reg.	740503
Ohio	Cuyahoga County	Westlake, city of	390136	750729 emerg., 800116 reg.	740412
Ohio	Lake County	Willoughby Hills, city of	390323	750522 emerg., 800116 reg.	731228
Pennsylvania	Lackawanna County	Archbald, borough of	420524	740319 emerg., 800116 reg.	740517
Pennsylvania	Clinton County	Avis, borough of	420318	730604 emerg., 800116 reg.	0
Pennsylvania	Lackawanna County	Blakely, borough of	420525	730302 emerg., 800116 reg.	0
Pennsylvania	Delaware County	Chester Heights, borough of	420406	721103 emerg., 800116 reg.	730330
Pennsylvania	Lackawanna County	Dickson City, borough of	420528	730302 emerg., 800116 reg.	740208
Pennsylvania	Lancaster County	East Donegal, township of	421768	740830 emerg., 800116 reg.	740531
Pennsylvania	Dauphin County	East Hanover, township of	420377	730507 emerg., 800116 reg.	740215
Pennsylvania	Northampton County	Glendon, borough of	422254	750807 emerg., 800116 reg.	741115
Pennsylvania	Westmoreland County	Latrobe, borough of	420883	741210 emerg., 800116 reg.	740726
Pennsylvania	Lancaster County	Martic, township of	421146	740411 emerg., 800116 reg.	740906
Pennsylvania	Cumberland County	Mechanicsburg, borough of	420362	711015 emerg., 800116 reg.	770114
Pennsylvania	Delaware County	Morton, borough of	420423	740618 emerg., 800116 reg.	750214
Pennsylvania	Northampton County	Plainfield, township of	421147	740404 emerg., 800116 reg.	740913
Pennsylvania	Northampton County	Wilson, borough of	421927	740717 emerg., 800116 reg.	731026
Pennsylvania	Clinton County	Woodward, township of	420337	730316 emerg., 800116 reg.	740607
Illinois	Moultrie County	Bethany, village of	170521	750516 emerg., 800118 reg.	740322
Illinois	St. Clair County	Freeburg, village of	170790	760324 emerg., 800118 reg.	770603
Michigan	Berrien County	Coloma, city of	260556	761027 emerg., 800118 reg.	740405
Ohio	Pickaway County	New Holland, village of	390448	750725 emerg., 800118 reg.	740830
West Virginia	Fayette County	Oak Hill, city of	540031	741024 emerg., 800118 reg.	770524
Nevada	Nye County	Gabbs, city of	320034	780623 emerg., 800122 reg.	740301
South Dakota	Moody County	Egan, city of	460061	750205 emerg., 800122 reg.	740510
South Dakota	Hamlin County	Estelline, city of	460036	750620 emerg., 800122 reg.	740719
Florida	Bay County	Cedar Grove, town of	120006	750516 emerg., 800125 reg.	791211
California	Los Angeles County	Beverly Hills, city of	060855	800124 emerg., 800128 reg.	731221
Missouri	Dunklin County	Clarkton, city of	290126	750506 emerg., 800129 reg.	760430
Oregon	Curry County	Port Orford, city of	410272	770331 emerg., 800129 reg.	780509
Texas	McLennan County	Leroy, city of	481314	800130 emerg., 800130 reg.	750117
California	San Bernardino County	Barstow, city of	060271	790524 emerg., 800201 reg.	740628
California	Los Angeles County	Culver City, city of	060114	750711 emerg., 800201 reg.	0
California	Napa County	Napa County *	060205	710129 emerg., 800201 reg.	741018
Idaho	Latah County	Kenrick, city of	160089	760106 emerg., 800201 reg.	740503
Illinois	Rock Island County	Moline, city of	170591	750304 emerg., 800201 reg.	740524
Illinois	Peoria County	Peoria, city of	170536	740410 emerg., 800201 reg.	740201
Indiana	Porter County	Chesterion, town of	180201	750228 emerg., 800201 reg.	0
Indiana	Vanderburgh County	Vanderburgh County *	180258	710625 emerg., 800201 reg.	731207
Kansas	Pottawatomie County	St. Marys, city of	200275	740530 emerg., 800201 reg.	740906
Massachusetts	Essex County	Lynnfield, town of	250089	740906 emerg., 800201 reg.	740726
Massachusetts	Middlesex County	Natick, town of	250207	750326 emerg., 800201 reg.	740816
Massachusetts	Norfolk County	Norwood, town of	250248	750702 emerg., 800201 reg.	740726
Massachusetts	Hampden County	Springfield, city of	250150	730209 emerg., 800201 reg.	750926
Michigan	Allegan County	Douglas, village of	260549	761130 emerg., 800201 reg.	740315
Michigan	Oakland County	Farmington Hills, city of	260172	730330 emerg., 800201 reg.	740628
Michigan	Allegan County	Saugatuck, township of	260009	731228 emerg., 800201 reg.	761217
Minnesota	St. Louis County	Duluth, city of	270421	740816 emerg., 800201 reg.	740816
Mississippi	Coahoma County	Coahoma county *	280038	740809 emerg., 800201 reg.	771021
Montana	Custer County	Miles City, city of	300014	750529 emerg., 800201 reg.	740123
New Jersey	Essex County	Cedar Grove, township of	340180	740315 emerg., 800201 reg.	750725
North Carolina	Buncombe County	Woodfin, town of	370380	750218 emerg., 800201 reg.	731228
Ohio	Ashtabula County	Ashtabula, city of	390011	750506 emerg., 800201 reg.	740503
Ohio	Ashtabula County	Conneaut, city of	390012	740923 emerg., 800201 reg.	741123
Ohio	Ashtabula County	Geneva, city of	390013	740816 emerg., 800201 reg.	750808
Ohio	Lake County	Kirtland, city of	390616	761027 emerg., 800201 reg.	740531
Oregon	Jackson County	Talent, city of	410100	750407 emerg., 800201 reg.	730914
Pennsylvania	Huntingdon County	Alexandria, borough of	420481	730601 emerg., 800201 reg.	740222
Pennsylvania	Beaver County	Ambridge, borough of	420102	750114 emerg., 800201 reg.	741101
Pennsylvania	Washington County	Chartiers, township of	422144	751120 emerg., 800201 reg.	731012
Pennsylvania	Wyoming County	Exeter, township of	420911	730119 emerg., 800201 reg.	740719
Pennsylvania	Allegheny County	Forward, township of	421064	740927 emerg., 800201 reg.	740201
Pennsylvania	Beaver County	Freedom, borough of	420111	750512 emerg., 800201 reg.	740913
Pennsylvania	Allegheny County	Kilbuck, township of	421073	750818 emerg., 800201 reg.	731012
Pennsylvania	Lancaster County	Marietta, borough of	420558	730705 emerg., 800201 reg.	731012
Pennsylvania	Luzerne County	Nescopeck, borough of	420618	730416 emerg., 800201 reg.	730309
Pennsylvania	Schuylkill County	Port Clinton, borough of	420784	721215 emerg., 800201 reg.	740201
Pennsylvania	Beaver County	Rochester, borough of	420116	750212 emerg., 800201 reg.	731228
Pennsylvania	Bucks County	Tullytown, borough of	420206	740815 emerg., 800201 reg.	740322
Pennsylvania	Beaver County	Vanport, township of	421320	740702 emerg., 800201 reg.	

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
South Carolina	Orangeburg County	Branchville, town of	450162	750804 emerg., 800201 reg.	740607
South Carolina	Greenville County	Greenville, city of	450091	740115 emerg., 800201 reg.	740628
Texas	Rockwall County	Heath, city of	480545	771111 emerg., 800201 reg.	761119
Texas	Dallas County	Sunnyvale, town of	480188	750716 emerg., 800201 reg.	740628
Vermont	Lamoille County	Stowe, village of	500067	750807 emerg., 800201 reg.	740809
South Dakota	Brookings County	Bruce, city of	460005	750820 emerg., 800205 reg.	740913
California	Orange County	Irvine, city of	060222	750703 emerg., 800215 reg.	740621
California	Orange County	La Habra, city of	060224	740703 emerg., 800215 reg.	740503
California	Santa Clara County	Palo Alto, city of	060348	710820 emerg., 800215 reg.	740628
California	Sonoma County	Petaluma, city of	060379	740926 emerg., 800215 reg.	740308
California	Orange County	Pasadena, city of	060229	750122 emerg., 800215 reg.	740614
Connecticut	Hartford County	Granby, town of	090125	730927 emerg., 800215 reg.	740719
Illinois	Peoria County	Peoria, city of	170533	720707 emerg., 800215 reg.	750117
Maine	Androscoggin County	Sabatias, town of	230011	761013 emerg., 800215 reg.	740531
Minnesota	Stearns County	Sartell, city of	270460	740705 emerg., 800215 reg.	731102
New Jersey	Camden County	Belmawr, borough of	340124	740801 emerg., 800215 reg.	740621
New Jersey	Morris County	Montville, township of	340349	730625 emerg., 800215 reg.	731228
New Jersey	Essex County	Verona, borough of	340195	730223 emerg., 800215 reg.	730622
New Jersey	Burlington County	Westampton, township of	340118	750929 emerg., 800215 reg.	740628
New York	Allegany County	Alfred, village of	360018	730907 emerg., 800215 reg.	740802
New York	Allegany County	Almond, village of	360021	730604 emerg., 800215 reg.	740109
New York	Chautauque County	North Harmony, town of	361076	750930 emerg., 800215 reg.	780303
North Dakota	Pembina County	Bathgate, city of	380080	770825 emerg., 800215 reg.	741122
Oregon	Clackamas County	Oregon City, city of	410021	740613 emerg., 800215 reg.	731228
Pennsylvania	Montgomery County	Collegeville, borough of	421900	741029 emerg., 800215 reg.	741122
Pennsylvania	York County	Goldsboro, borough of	420825	730606 emerg., 800215 reg.	731228
Pennsylvania	York County	Hallam, borough of	420926	730807 emerg., 800215 reg.	731130
Pennsylvania	Berks County	Hamburg, borough of	420134	730501 emerg., 800215 reg.	731005
Pennsylvania	Allegheny County	Kennedy, township of	421072	750426 emerg., 800215 reg.	740920
Pennsylvania	York County	Lower Chanceford, township of	420930	730606 emerg., 800215 reg.	740726
Pennsylvania	Wyoming County	Mesheppen, township of	421009	740116 emerg., 800215 reg.	740503
Pennsylvania	Washington County	North Strabane, township of	422151	741210 emerg., 800215 reg.	741213
Pennsylvania	Bucks County	Northampton, township of	420988	730926 emerg., 800215 reg.	740517
Pennsylvania	Elk County	Ridgway, borough of	420444	720901 emerg., 800215 reg.	730330
Pennsylvania	Allegheny County	Stowe, township of	421110	741205 emerg., 800215 reg.	741129
Pennsylvania	Cumberland County	Upper Allen, township of	420372	711210 emerg., 800215 reg.	730511
Pennsylvania	Allegheny County	West Milford, borough of	420085	740807 emerg., 800215 reg.	740322
Washington	King County	Lake Forest Park, city of	530082	750407 emerg., 800215 reg.	740628
Wisconsin	Kewaunee County	Kewaunee, city of	550215	740411 emerg., 800215 reg.	740208
Wyoming	Lincoln County	Lincoln County *	560032	780623 emerg., 800215 reg.	780613
Wyoming	Big Horn County	Greybull, town of	560005	780316 emerg., 800219 reg.	740621
Louisiana	Avoyelles Parish County	Avoyelles Parish *	220019	730424 emerg., 800226 reg.	750110
Colorado	Weld County	Platteville, town of	080190	750505 emerg., 800229 reg.	0
Illinois	Cook County	Harwood Heights, village of	170101	790711 emerg., 800229 reg.	0
Michigan	Oakland County	Berkley, city of	260292	740507 emerg., 800229 reg.	770513
North Dakota	Logan County	Gackle, city of	380334	780324 emerg., 800229 reg.	0
Arkansas	Chicot County	Eudora, city of	050027	740702 emerg., 800304 reg.	740301
Arkansas	Pulaski County	Little Rock, city of	050181	730316 emerg., 800304 reg.	750221
California	Siskiyou County	Etna, city of	060364	750722 emerg., 800304 reg.	740222
California	Sonoma County	Healdsburg, city of	060378	740520 emerg., 800304 reg.	740301
Connecticut	Litchfield County	Kent, town of	090186	760213 emerg., 800304 reg.	750103
Georgia	Gwinnett County	Lilburn, city of	130100	750618 emerg., 800304 reg.	740607
Georgia	Richmond County	Richmond County *	130158	731123 emerg., 800304 reg.	751024
Idaho	Ada County	Eagle, city of	160003	741120 emerg., 800304 reg.	731207
Illinois	St. Clair County	Centerville, city of	170622	730516 emerg., 800304 reg.	780113
Illinois	McHenry County	Fox River Valley Gardens, village of	170478	730119 emerg., 800304 reg.	740405
Iowa	Clayton County	Guttenberg, city of	190077	740501 emerg., 800304 reg.	740208
Kentucky	Campbell County	Mentor, city of	210275	750221 emerg., 800304 reg.	750718
Michigan	St. Clair County	Ira, township of	260199	721208 emerg., 800304 reg.	740503
Michigan	Van Buren County	South Haven, city of	260211	740516 emerg., 800304 reg.	740607
Mississippi	Coahoma County	Clarksdale, city of	280039	740402 emerg., 800304 reg.	740607
Mississippi	Pearl River County	Picayune, city of	280130	740513 emerg., 800304 reg.	740628
Nebraska	Cass County	Louisville, village of	310031	750604 emerg., 800304 reg.	740510
New Hampshire	Merrimack County	Concord, city of	330110	740717 emerg., 800304 reg.	740802
New Jersey	Burlington County	Pemberton, township of	340112	740222 emerg., 800304 reg.	741213
New Jersey	Burlington County	Southampton, township of	340115	720114 emerg., 800304 reg.	740109
New York	Allegany County	Almond, town of	360968	730419 emerg., 800304 reg.	740412
New York	Steuben County	Arkport, village of	360763	740620 emerg., 800304 reg.	740517
North Carolina	Cabarrus County	Concord, city of	370037	740116 emerg., 800304 reg.	731228
North Carolina	Guilford County	Jamestown, town of	370114	750508 emerg., 800304 reg.	731207
Oklahoma	Okmulgee County	Henryetta, city of	400144	750819 emerg., 800304 reg.	740123
South Carolina	Anderson County	Honea Path, town of	450016	760304 emerg., 800304 reg.	750725
South Dakota	Pennington County	Keystone, town of	460231	740726 emerg., 800304 reg.	770107
Tennessee	Bradley County	Cleveland, city of	470015	750715 emerg., 800304 reg.	760416
Tennessee	Franklin County	Cowan, city of	470053	750611 emerg., 800304 reg.	740614
Tennessee	Franklin County	Decherd, city of	470054	740814 emerg., 800304 reg.	740614
Texas	Hidalgo County	Weslaco, city of	480349	740426 emerg., 800304 reg.	740329
Vermont	Windsor County	Chester, town of	500146	750703 emerg., 800304 reg.	740628
Washington	King County	Carnation, town of	530076	750725 emerg., 800304 reg.	740531
Washington	Lewis County	Pe Ell, town of	530296	750707 emerg., 800304 reg.	750718
California	Alameda County	Albany, city of	060003	800311 emerg., 800311 reg.	761119
Colorado	Clear Creek County	Clear Creek County *	080034	731127 emerg., 800311 reg.	0
Texas	Travis County	San Leanna, city of	481305	800311 emerg., 800311 reg.	780711
Alabama	Etowah County	Altoona, city of	010078	750715 emerg., 800314 reg.	740517
Alabama	Cherokee County	Centre, city of	010233	761227 emerg., 800314 reg.	750207
Alabama	Walker County	Oakman, town of	010299	760112 emerg., 800314 reg.	750221
New Hampshire	Hillsborough County	Pelham, town of	330100	740719 emerg., 800314 reg.	740222
Arizona	Santa Cruz County	Patagonia, town of	040092	770713 emerg., 800318 reg.	760409
Arizona	Gila County	Payson, town of	040107	750917 emerg., 800318 reg.	750124
Arkansas	Faulkner County	Conway, city of	050078	741029 emerg., 800318 reg.	740517

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California	Los Angeles County	Montebello, city of	060141	750725 emerg., 800318 reg	740628
California	Alameda County	San Leandro, city of	060013	750530 emerg., 800318 reg	740607
Colorado	Eagle County	Basalt, town of	080052	750501 emerg., 800318 reg	740628
Colorado	Eagle County	Eagle, town of	080238	760820 emerg., 800318 reg	750815
Colorado	Boulder County	Lafayette, city of	080026	750607 emerg., 800318 reg	740524
Colorado	Weld County	Weld County*	080266	740916 emerg., 800318 reg	780321
Connecticut	New London County	Groton Long Point Assn.	090167	740820 emerg., 800318 reg	750411
Connecticut	New Haven County	Orange, town of	090087	730525 emerg., 800318 reg	730914
Florida	Seminole County	Altamonte Spring, city of	120290	741009 emerg., 800318 reg	740215
Florida	Seminole County	Lake Mary, city of	120416	760910 emerg., 800318 reg	770708
Florida	Seminole County	Longwood, city of	120292	750312 emerg., 800318 reg	740123
Florida	Clay County	Orange Park, town of	120066	750606 emerg., 800318 reg	740531
Florida	Wakulla County	St. Marks, town of	120316	730521 emerg., 800318 reg	731109
Florida	Brevard County	West Melbourne, city of	120335	750131 emerg., 800318 reg	740308
Idaho	Canyon County	Notus, city of	160147	761004 emerg., 800318 reg	750926
Illinois	Madison County	East Alton, village of	170440	740404 emerg., 800318 reg	740517
Illinois	Rock Island County	Milan, village of	170590	750403 emerg., 800318 reg	740510
Indiana	Lake County	Crown Point, city of	180128	750131 emerg., 800318 reg	731123
Maine	York County	Cornish, town of	230147	750805 emerg., 800318 reg	740628
Maryland	Cecil County	Elkton, town of	240022	731107 emerg., 800318 reg	740215
Mississippi	Leflore County	Greenwood, city of	280102	730607 emerg., 800318 reg	740607
Missouri	Clay County	Clay County*	290066	740906 emerg., 800318 reg	740906
Missouri	St. Louis County	Norwood Court, village of	290867	780814 emerg., 800318 reg	780523
Missouri	Cass County	Strasburg, city of	290071	760805 emerg., 800318 reg	740816
Nebraska	Dodge County	North Bend, city of	310239	740115 emerg., 800318 reg	740726
Nebraska	Douglas County	Valley, city of	310078	750501 emerg., 800318 reg	740517
New York	Chautauqua County	Busti, town of	361106	750808 emerg., 800318 reg	741018
New York	Chautauqua County	Celoron, village of	360135	750821 emerg., 800318 reg	740215
New York	Rensselaer County	East Greenbush, town of	361133	750613 emerg., 800318 reg	741213
New York	Chautauqua County	Ellettsville, town of	361072	751002 emerg., 800318 reg	780210
New York	Monroe County	Greece, town of	360417	730309 emerg., 800318 reg	740123
New York	Steuben County	Hornell, city of	360776	780227 emerg., 800318 reg	730525
New York	Albany County	Menands, village of	360012	740725 emerg., 800318 reg	740201
New York	Rensselaer County	Rensselaer, city of	361032	750915 emerg., 800318 reg	740726
New York	Suffolk County	Southold, town of	360813	721020 emerg., 800318 reg	741129
New York	Rensselaer County	Troy, city of	360677	750226 emerg., 800318 reg	740405
Oklahoma	Oklahoma County	Del City, city of	400233	731123 emerg., 800318 reg	740308
Pennsylvania	Washington County	Carroll, township of	422142	741029 emerg., 800318 reg	741115
Pennsylvania	Lancaster County	Conestoga, township of	420544	730424 emerg., 800318 reg	740726
Pennsylvania	York County	Conewago, township of	420918	730705 emerg., 800318 reg	731228
Pennsylvania	Erie County	Fairview, borough of	421238	760402 emerg., 800318 reg	740726
Pennsylvania	Allegheny County	Glen Field, borough of	420039	750709 emerg., 800318 reg	740329
Pennsylvania	Allegheny County	Haysville, borough of	420042	740703 emerg., 800318 reg	740809
Pennsylvania	York County	Hellam, township of	420927	730627 emerg., 800318 reg	740329
Pennsylvania	Dauphin County	Londonderry, township of	420383	800318 emerg., 800318 reg	731012
Pennsylvania	Lancaster County	Manor, township of	420557	730419 emerg., 800318 reg	740503
Pennsylvania	Cumberland County	Mount Holly Springs, borough of	420365	720225 emerg., 800318 reg	730209
Pennsylvania	Washington County	New Eagle, borough of	420657	741205 emerg., 800318 reg	740123
Pennsylvania	Dauphin County	Paxtang, borough of	420390	730202 emerg., 800318 reg	760730
Pennsylvania	Delaware County	Prospect Park, borough of	420427	740919 emerg., 800318 reg	740726
Pennsylvania	Delaware County	Rutledge, borough of	420432	741204 emerg., 800318 reg	740719
Pennsylvania	Luzerne County	Salem, township of	420625	730523 emerg., 800318 reg	731130
Pennsylvania	Allegheny County	Shaler, township of	421101	740422 emerg., 800318 reg	740531
Pennsylvania	Dauphin County	West Hanover, township of	421600	740920 emerg., 800318 reg	750124
South Carolina	Lexington County	Pine Ridge, town of	450136	751128 emerg., 800318 reg	740621
Tennessee	Bradley County	Charleston, city of	470014	750808 emerg., 800318 reg	740201
Virginia	Fauquier County	Remington, town of	510056	741213 emerg., 800318 reg	741115
West Virginia	Jefferson County	Shepherdstown, town of	540069	750214 emerg., 800318 reg	740201
New York	Orleans County	Murray, town of	361256	750325 emerg., 800321 reg	741018
North Carolina	Davie County	Davie County*	370306	751223 emerg., 800321 reg	780421
North Carolina	Union County	Indian Trail, town of	370235	760614 emerg., 800321 reg	740906
North Dakota	La Moure County	La Moure, city of	380042	740612 emerg., 800321 reg	731116
Missouri	Cass County	East Lynne, city of	290065	750811 emerg., 800325 reg	741129
North Carolina	Edgecombe County	Macclesfield, town of	370090	800325 emerg., 800325 reg	740109
Alabama	Etowah County	Hokes Bluff, town of	010254	760901 emerg., 800328 reg	761210
California	Napa County	Yountville, city of	060209	750529 emerg., 800328 reg	740301
Connecticut	Middlesex County	Middlefield, town of	090067	731025 emerg., 800328 reg	740531
Connecticut	New Haven County	Southbury, town of	090069	730831 emerg., 800328 reg	740208
Illinois	St. Clair County	Brooklyn, village of	170619	740501 emerg., 800328 reg	740301
Illinois	Lake County	Mettawa, village of	170381	790320 emerg., 800328 reg	741018
Indiana	Floyd County	Georgetown, town of	180063	750331 emerg., 800328 reg	731228
Kentucky	Campbell County	Melbourne, city of	210250	740912 emerg., 800328 reg	740201
Maine	Kennebec County	West Gardiner, town of	230250	760603 emerg., 800328 reg	741227
Minnesota	Morrison County	Royalton, city of	270303	740405 emerg., 800328 reg	470607
Nebraska	Furnas County	Cambridge, city of	310087	730524 emerg., 800328 reg	740503
Nevada	Douglas County	Douglas County*	320006	740212 emerg., 800328 reg	750103
New Jersey	Essex County	Newark, city of	340189	721103 emerg., 800328 reg	740315
New Jersey	Bergen County	Rochelle Park, township of	340070	730216 emerg., 800328 reg	730622
New York	Herkimer County	Little Falls, town of	360311	750722 emerg., 800328 reg	740405
New York	Orleans County	Medina, village of	360644	750707 emerg., 800328 reg	740524
New York	Rockland County	Suffern, village of	360694	730705 emerg., 800328 reg	731228
North Carolina	Edgecombe County	Pinetops, town of	370091	751107 emerg., 800328 reg	740109
Ohio	Athens County	Athens, city of	390016	741122 emerg., 800328 reg	750627
Ohio	Lucas County	Maumee, city of	390360	750725 emerg., 800328 reg	740208
Wisconsin	Milwaukee County	Brown Deer, village of	550271	750324 emerg., 800328 reg	731217
Florida	St. Lucie County	St. Lucie Village, town of	120288	750802 emerg., 800401 reg	741129
Illinois	Cook County	Calumet City, city of	170072	750224 emerg., 800401 reg	740405
Kentucky	Calloway County	Murray, city of	210033	750422 emerg., 800401 reg	740614
Minnesota	Wright County	Delano, city of	270539	750203 emerg., 800401 reg	740524
Mississippi	Hinds County	Jackson, city of	280072	730419 emerg., 800401 reg	741206

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Missouri	St. Louis County	Hazelwood, city of	290357	731127 emerg., 800401 reg.	740109
New Hampshire	Rockingham County	Windham, town of	330144	750807 emerg., 800401 reg.	740816
New York	Onondaga County	Clay, town of	360573	730515 emerg., 800401 reg.	770701
New York	Westchester County	Rye, city of	360931	740423 emerg., 800401 reg.	781103
Pennsylvania	Bradford County	Athens, township of	420976	740130 emerg., 800401 reg.	740628
Pennsylvania	Washington County	Canonsburg, borough of	420849	741210 emerg., 800401 reg.	740201
Pennsylvania	Luzerne County	Hunlock, township of	420994	731105 emerg., 800401 reg.	740322
Pennsylvania	Allegheny County	Jefferson, borough of	420046	740618 emerg., 800401 reg.	740614
Pennsylvania	Lycoming County	Platt, township of	420653	730410 emerg., 800401 reg.	740123
Pennsylvania	Allegheny County	Pitcairn, borough of	420062	741108 emerg., 800401 reg.	760730
Tennessee	Davidson County	Oak Hill, town of	470351	750818 emerg., 800401 reg.	0
Texas	Collin County	Murphy, city of	480137	750807 emerg., 800401 reg.	731207
Vermont	Bennington County	Pownal, town of	500016	750709 emerg., 800401 reg.	740816
West Virginia	Marshall County	Glen Dale, city of	540109	750402 emerg., 800401 reg.	740628
Utah	Cache County	Hyrum, city of	490017	741107 emerg., 800408 reg.	740524
Alabama	De Kalb County	Collinsville, town of	010066	751024 emerg., 800415 reg.	740517
Alabama	Talladega County	Talladega, city of	010200	740627 emerg., 800415 reg.	740607
Alabama	De Kalb County	Valley Head, town of	010068	750807 emerg., 800415 reg.	740503
Arkansas	Craighead County	Brookland, town of	050047	750501 emerg., 800415 reg.	740823
Arkansas	Lawrence County	Hoxie, city of	050119	750414 emerg., 800415 reg.	740510
California	San Bernardino County	Adelanto, city of	060639	790921 emerg., 800415 reg.	781107
California	Sonoma County	Cotati, city of	060377	750722 emerg., 800415 reg.	741122
California	Siskiyou County	Fort Jones, town of	060365	741101 emerg., 800415 reg.	740405
California	Los Angeles County	Lynwood, city of	060635	750606 emerg., 800415 reg.	740628
California	Riverside County	Palm Desert, city of	060629	741226 emerg., 800415 reg.	770614
California	Riverside County	Riverside County*	060245	710115 emerg., 800415 reg.	740619
California	Los Angeles County	Santa Fe Springs, city of	060158	750808 emerg., 800415 reg.	740628
California	Ventura County	Santa Paula, city of	060420	711022 emerg., 800415 reg.	740524
Connecticut	Litchfield County	New Milford, town of	090049	740410 emerg., 800415 reg.	741129
Florida	Indian River County	Sebastian, city of	120123	750902 emerg., 800415 reg.	740208
Kentucky	Campbell County	Bellevue, city of	210035	740501 emerg., 800415 reg.	740201
Kentucky	Kenton County	Bromley, city of	210253	740919 emerg., 800415 reg.	740201
Kentucky	McCracken County	Paducah, city of	210152	750512 emerg., 800415 reg.	740614
Louisiana	Tangipahoa Parish	Kentwood, town of	220210	750424 emerg., 800415 reg.	731102
Louisiana	Pointe Coupee Parish	New Roads, town of	220144	730423 emerg., 800415 reg.	740201
Mississippi	Newton County	Newton, city of	280121	740415 emerg., 800415 reg.	740201
Mississippi	Forrest County	Petal, city of	280260	740927 emerg., 800415 reg.	740201
Mississippi	Neshoba County	Union, town of	280122	780307 emerg., 800415 reg.	750207
Mississippi	Yazoo County	Yazoo City, city of	280189	731211 emerg., 800415 reg.	740621
Missouri	Cole County	Jefferson City, city of	290108	710423 emerg., 800415 reg.	740315
Missouri	Platte County	Lake Waukomis, city of	290700	790320 emerg., 800415 reg.	760910
Montana	Cascade County	Cascade County*	300008	750522 emerg., 800415 reg.	0
Nebraska	Scotts Bluff County	Terrytown, village of	310207	750825 emerg., 800415 reg.	731217
New Hampshire	Grafton County	Bristol, town of	330047	760505 emerg., 800415 reg.	740621
New Hampshire	Strafford County	Dover, city of	330145	731119 emerg., 800415 reg.	740726
New Hampshire	Hillsborough County	Wilton, town of	330102	750226 emerg., 800415 reg.	740405
New Jersey	Bergen County	Garfield, city of	340037	720505 emerg., 800415 reg.	730629
New York	Albany County	Albany, city of	360001	741101 emerg., 800415 reg.	740503
New York	Cayuga County	Aurora, village of	360101	750117 emerg., 800415 reg.	750425
North Carolina	Buncombe County	Black Mountain, town of	370033	750606 emerg., 800415 reg.	740308
North Carolina	Edgecombe County	Princeville, town of	370318	760809 emerg., 800415 reg.	750725
North Carolina	Edgecombe County	Whitakers, town of	370095	750806 emerg., 800415 reg.	740524
North Dakota	Pembina County	Wahalla, city of	380254	760503 emerg., 800415 reg.	750131
Ohio	Franklin County	Upper Arlington, city of	390178	730808 emerg., 800415 reg.	740517
Oklahoma	Muskogee County	Porum, town of	400127	760521 emerg., 800415 reg.	740628
Oklahoma	Kiowa County	Snyder, city of	400089	750318 emerg., 800415 reg.	740109
Oregon	Lincoln County	Newport, city of	410131	741018 emerg., 800415 reg.	740524
Pennsylvania	Lackawanna County	Jessup, borough of	420531	740404 emerg., 800415 reg.	740412
Pennsylvania	Lehigh County	Macungie, borough of	420590	740418 emerg., 800415 reg.	740109
Pennsylvania	Lycoming County	Nippenose, township of	420651	730501 emerg., 800415 reg.	731012
Pennsylvania	Lackawanna County	Ransom, township of	420537	730709 emerg., 800415 reg.	740510
Pennsylvania	Washington County	South Strabane, township of	422155	750306 emerg., 800415 reg.	741220
Texas	Bexar County	Balcones Heights, city of	481094	751009 emerg., 800415 reg.	750815
Texas	Medina County	Natalia, city of	481112	780111 emerg., 800415 reg.	761105
Texas	Ellis County	Ovilla, city of	481155	750805 emerg., 800415 reg.	750711
Washington	Franklin County	Kahlotus, town of	530045	751231 emerg., 800415 reg.	741213
West Virginia	Marshall County	McMechen, city of	540110	750411 emerg., 800415 reg.	740329
Wisconsin	Columbia County	Columbia County*	550581	750731 emerg., 800415 reg.	781103
Wisconsin	Milwaukee County	River Hills, village of	550280	740612 emerg., 800415 reg.	731217
Wisconsin	Milwaukee County	South Milwaukee, city of	550283	740211 emerg., 800415 reg.	731228
Indiana	Henricks County	Brownsburg, town of	180087	800417 emerg., 800417 reg.	731123
Missouri	Clay County	Holt, city of	290093	800417 emerg., 800417 reg.	760702
California	Colusa County	Williams, city of	060024	741217 emerg., 800422 reg.	740329
North Dakota	La Moure County	Marion, city of	380188	751030 emerg., 800422 reg.	750221
Illinois	Logan County	Atlanta, city of	171006	800423 emerg., 800425 reg.	0
Iowa	Sioux County	Granville, city of	180737	771227 emerg., 800425 reg.	750926
Iowa	Jasper County	Newton, city of	190628	770509 emerg., 800425 reg.	0
Iowa	Woodbury County	Salix, city of	190296	751103 emerg., 800425 reg.	741018
North Dakota	Williams County	Ray, city of	380247	761230 emerg., 800429 reg.	750608
Alabama	De Kalb County	Fort Payne, city of	010067	750717 emerg., 800501 reg.	741101
Alabama	Butler County	Greenville, city of	010329	750313 emerg., 800501 reg.	761008
Alabama	De Kalb County	Rainsville, city of	010368	750716 emerg., 800501 reg.	760312
Arizona	Gila County	Miami, town of	040030	750430 emerg., 800501 reg.	740628
Arizona	Maricopa County	Paradise Valley, town of	040049	720915 emerg., 800501 reg.	731207
California	Napa County	St. Helena, city of	060208	750703 emerg., 800501 reg.	740531
Colorado	Summit County	Silverthorne, town of	080201	750716 emerg., 800501 reg.	750725
Connecticut	Hartford County	South Windsor, town of	090036	740725 emerg., 800501 reg.	740816
Florida	Calhoun County	Blountstown, city of	120060	750317 emerg., 800501 reg.	740524
Florida	Polk County	Frostproof, city of	120265	750502 emerg., 800501 reg.	740116
Georgia	Columbia County	Columbia County*	130059	751002 emerg., 800501 reg.	760521

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Georgia	Gwinnett County	Norcross, city of	130101	741024 emerg., 800501 reg.	740524
Idaho	Bannock County	Pocatello, city of	180012	740207 emerg., 800501 reg.	740301
Illinois	Will County	New Lanox, village of	170706	740919 emerg., 800501 reg.	740524
Indiana	Madison County	Chesterfield, town of	180151	750214 emerg., 800501 reg.	741217
Indiana	Lake County	Schererville, town of	180142	750317 emerg., 800501 reg.	731130
Michigan	Bay County	Portsmouth, township of	260028	730428 emerg., 800501 reg.	740628
Minnesota	Hennepin County	Edina, city of	270160	730727 emerg., 800501 reg.	740201
Minnesota	Morrison County	Little Falls, city of	270299	740509 emerg., 800501 reg.	740621
Missouri	Buchanan County	Agency, town of	290041	740620 emerg., 800501 reg.	740830
Missouri	Cass County	Freemant, city of	290068	761215 emerg., 800501 reg.	751108
North Carolina	Davidson County	Davidson County*	370307	760723 emerg., 800501 reg.	770617
North Carolina	Gaston County	Gaston County*	370099	760416 emerg., 800501 reg.	741129
North Carolina	Iredell County	Mooreville, town of	370314	760324 emerg., 800501 reg.	750425
North Dakota	Walsh County	Forest River, city of	380136	751022 emerg., 800501 reg.	741122
North Dakota	Walsh County	Park River, city of	380139	750203 emerg., 800501 reg.	740524
New Hampshire	Hillsborough County	Greenfield, town of	330209	771117 emerg., 800501 reg.	750404
New Hampshire	Hillsborough County	Milford, town of	330096	750612 emerg., 800501 reg.	740322
New Hampshire	Hillsborough County	Peterborough, town of	330101	750422 emerg., 800501 reg.	761112
New Jersey	Middlesex County	North Brunswick, township of	340271	740513 emerg., 800501 reg.	750628
New Jersey	Gloucester County	Westville, borough of	340215	750702 emerg., 800501 reg.	740308
New York	Chemung County	Southport, town of	360156	730302 emerg., 800501 reg.	740208
New York	Saratoga County	Waterford, village of	360735	750116 emerg., 800501 reg.	740329
Ohio	Fairfield County	Lancaster, city of	390161	750728 emerg., 800501 reg.	740517
Ohio	Franklin County	Lockbourne, village of	390691	780912 emerg., 800501 reg.	750131
Ohio	Lorain County	South Amherst, village of	390358	750624 emerg., 800501 reg.	750711
Oklahoma	Kay County	Blackwell, city of	400078	740531 emerg., 800501 reg.	740201
Oklahoma	Muskogee County	Webbers Falls, town of	400131	751128 emerg., 800501 reg.	750110
Pennsylvania	Columbia County	Bloomsburg, town of	420339	720309 emerg., 800501 reg.	740222
Pennsylvania	Beaver County	Bridgewater, borough of	420106	741024 emerg., 800501 reg.	740222
Pennsylvania	Wyoming County	Eaton, township of	420909	730727 emerg., 800501 reg.	740109
Pennsylvania	Allegheny County	Edgeworth, borough of	420032	740805 emerg., 800501 reg.	740315
Pennsylvania	Delaware County	Tinicum, township of	421605	750207 emerg., 800501 reg.	741206
South Carolina	Anderson County	Belton, city of	450015	750724 emerg., 800501 reg.	740524
South Carolina	Lexington County	Cayce, city of	450131	740205 emerg., 800501 reg.	740531
South Carolina	Lexington County	Irmo, town of	450133	750627 emerg., 800501 reg.	740517
South Carolina	Lexington County	Lexington, town of	450134	750527 emerg., 800501 reg.	740607
South Carolina	Lexington County	Springdale, town of	450138	731204 emerg., 800501 reg.	740628
Texas	Dallas County	Hutchins, city of	480179	750513 emerg., 800501 reg.	740322
Utah	Emery County	Castle Dale, city of	490059	750725 emerg., 800501 reg.	780110
Virginia	Franklin County	Rocky Mount, town of	510291	750618 emerg., 800501 reg.	750117
Virginia	Warren County	Warren County*	510166	730504 emerg., 800501 reg.	740719
Washington	Pierce County	Bonney Lake, town of	530274	0 emerg., 800501 reg.	761029
Washington	Pierce County	Buckley, city of	530139	751105 emerg., 800501 reg.	740816
Washington	Lewis County	Chehalis, city of	530104	740424 emerg., 800501 reg.	740607
Washington	Franklin County	Franklin County*	530044	740509 emerg., 800501 reg.	770621
Washington	King County	Issaquah, city of	530079	740520 emerg., 800501 reg.	740208
Washington	Whitman County	Whitman County*	530205	740701 emerg., 800501 reg.	741227
Wisconsin	Dane County	Middleton, city of	550087	740627 emerg., 800501 reg.	731217
West Virginia	Marshall County	Benwood, city of	540108	740603 emerg., 800501 reg.	740405
Illinois	Cass County	Beardstown, city of	170022	750509 emerg., 800502 reg.	740315
Illinois	McLean County	Leroy, city of	170499	750506 emerg., 800502 reg.	740809
Illinois	Cook County	South Chicago Heights, village of	170162	750812 emerg., 800502 reg.	740412
Indiana	Marshall County	Culver, town of	180384	750815 emerg., 800502 reg.	750221
Texas	McLennan County	Lorena, town of	480928	800504 emerg., 800514 reg.	770621
Arkansas	Dallas County	Fordyce, city of	050063	750312 emerg., 800515 reg.	740524
Arizona	Maricopa County	Mesa, city of	040048	720929 emerg., 800515 reg.	730813
California	San Joaquin County	San Joaquin County*	060299	730223 emerg., 800515 reg.	0
Colorado	Summit County	Frisco, town of	080245	761202 emerg., 800515 reg.	761015
Connecticut	New London County	Groton, city of	090126	730918 emerg., 800515 reg.	740531
Georgia	De Kalb County	DeKalb County*	130065	700605 emerg., 800515 reg.	700605
Georgia	Gwinnett County	Lawrenceville, city of	130099	740828 emerg., 800515 reg.	740628
Georgia	Bullock County	Statesboro, city of	130021	750120 emerg., 800515 reg.	740607
Idaho	Cleanwater County	Cleanwater County*	160046	740718 Emerg., 800515 Reg.	741220
Idaho	Ada County	Garden City, city of	160004	790112 Emerg., 800515 Reg.	731217
Idaho	Latah County	Moscow, city of	160090	740315 Emerg., 800515 Reg.	740215
Illinois	Madison County	South Roxana, village of	170449	750703 Emerg., 800515 Reg.	761001
Kentucky	Johnson County	Paintsville, city of	210127	741018 Emerg., 800515 Reg.	740301
Louisiana	Ascension Parish	Donaldsonville, city of	220014	730425 Emerg., 800515 Reg.	740607
Massachusetts	Norfolk County	Avon, town of	250231	751114 Emerg., 800515 Reg.	740621
Massachusetts	Franklin County	Buckland, town of	250111	750707 Emerg., 800515 Reg.	740531
Massachusetts	Essex County	Peabody, city of	250099	750729 Emerg., 800515 Reg.	740802
Massachusetts	Worcester County	Westborough, town of	250344	750722 Emerg., 800515 Reg.	740308
Maryland	Worcester County	Snow Hill, town of	240086	750605 Emerg., 800515 Reg.	740412
Maine	Kennebec County	Gardiner, city of	230068	750227 Emerg., 800515 Reg.	740222
Michigan	Oakland County	Birmingham, city of	260168	720505 Emerg., 800515 Reg.	730406
Michigan	Van Buren County	South Haven, township of	260212	750422 Emerg., 800515 Reg.	740628
Minnesota	Anoka County	East Bethel, city of	270012	740616 Emerg., 800515 Reg.	750725
Minnesota	Mower County	Leroy, city of	270583	740502 Emerg., 800515 Reg.	741227
North Carolina	Carteret County	Carteret County*	370043	711119 Emerg., 800515 Reg.	750214
North Carolina	Alamance County	Gibsonville, town of	370387	750623 Emerg., 800515 Reg.	770610
North Carolina	Orange County	Hillsborough, town of	370343	770406 Emerg., 800515 Reg.	780519
North Carolina	Iredell County	Iredell County*	370313	760723 Emerg., 800515 Reg.	780526
North Carolina	Rowan County	Salisbury, city of	370215	740723 Emerg., 800515 Reg.	740222
North Dakota	Logan County	Napoleon, city of	380044	780314 Emerg., 800515 Reg.	780314
North Dakota	Nelson County	Petersburg, city of	380194	751022 Emerg., 800513 Reg.	750117
Nebraska	Douglas County	Ralston, city of	310077	750819 Emerg., 800515 Reg.	740123
New Jersey	Morris County	Chatham, township of	340504	750422 Emerg., 800515 Reg.	730727
New Jersey	Hunterdon County	Flemington, borough of	340520	750925 Emerg., 800515 Reg.	741101
New Jersey	Somerset County	Franklin, township of	340434	730406 Emerg., 800515 Reg.	731012
New Jersey	Monmouth County	Union Beach, borough of	340331	740618 Emerg., 800515 Reg.	731228
New York	Steuben County	Riverside, village of	360971	730411 Emerg., 800515 Reg.	730921

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
New York	Rensselaer County	Sand Lake, town of	361167	760202 Emerg., 800515 Reg.	741227
Oklahoma	Oklahoma County	Edmond, city of	400252	740618 Emerg., 800515 Reg.	750117
Oregon	Union County	Union County*	410216	740507 Emerg., 800515 Reg.	771025
Pennsylvania	Wyoming County	Braintrim, township of	421008	731114 Emerg., 800515 Reg.	740628
Pennsylvania	Wyoming County	Laceyville, borough of	420913	740402 Emerg., 800515 Reg.	740628
Pennsylvania	York County	Mount Wolf, borough of	421021	730820 Emerg., 800515 Reg.	740913
Pennsylvania	Blair County	Woodbury, township of	420963	730926 Emerg., 800515 Reg.	740915
South Carolina	York County	Clover, town of	450194	750707 Emerg., 800515 Reg.	740524
South Carolina	Anderson County	Pendleton, town of	450019	751007 Emerg., 800515 Reg.	740621
South Dakota	Hughes County	Blunt, city of	460039	750429 Emerg., 800515 Reg.	750110
South Dakota	Pennington County	Box Elder, city of	460089	740607 Emerg., 800515 Reg.	741025
South Dakota	Pennington County	New Underwood, town of	460092	750818 Emerg., 800515 Reg.	770128
Tennessee	Marion County	Marion County*	470114	731023 Emerg., 800515 Reg.	771028
Tennessee	Morgan County	Oliver Springs, town of	470005	740919 Emerg., 800515 Reg.	740322
Texas	Grayson County	Denison, city of	480259	740823 Emerg., 800515 Reg.	740623
Virginia	Montgomery County	Blacksburg, town of	510100	740619 Emerg., 800515 Reg.	740607
Virginia	Prince William County	Dumfries, town of	510210	730815 Emerg., 800515 Reg.	760618
Virginia	Smyth County	Smyth County*	510184	731226 Emerg., 800515 Reg.	750117
Vermont	Windham County	Rockingham, town of	500135	750124 Emerg., 800515 Reg.	740621
Washington	King County	Des Moines, city of	530077	740625 Emerg., 800515 Reg.	740628
Washington	Kitsap County	Kitsap County*	530092	750219 Emerg., 800515 Reg.	750214
Wisconsin	Ozaukee County	Cedarburg, city of	550312	740918 Emerg., 800515 Reg.	731228
Wisconsin	Ozaukee County	Grafton, village of	550314	750430 Emerg., 800515 Reg.	740531
West Virginia	Marshall County	Moundsville, city of	540111	750527 Emerg., 800515 Reg.	740322
West Virginia	Hancock County	New Cumberland, city of	540049	750521 Emerg., 800515 Reg.	740329
New York	Rensselaer County	Hoosick Falls, village of	360674	741226 Emerg., 800515 Reg.	740510
Utah	Summit County	Henefer, town of	490136	750723 Emerg., 800520 Reg.	750221
Utah	Box Elder County	Perry City, city of	490010	750818 Emerg., 800520 Reg.	740726
Wyoming	Laramie County	Laramie County	560029	800521 Emerg., 800521 Reg.	771115
Minnesota	Fillmore County	Rushford, city of	270687	780524 Emerg., 800523 Reg.	760827
North Dakota	Nelson County	Michigan, city of	380076	750501 Emerg., 800527 Reg.	750110
Alabama	Walker County	Parrish, town of	010298	760116 Emerg., 800530 Reg.	750110
California	Santa Clara	Cupertino, city of	060339	750708 Emerg., 800501 Reg.	740215

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 4, 1980.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 80-18790 Filed 6-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 5844]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the

sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood-prone areas, as shown on the Office of Federal Insurance and Hazard Mitigation's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special hazard area identified	Date ¹
Alabama	Coffee	Enterprise, city of	010045B	Feb. 21, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	July 26, 1974 Oct. 10, 1975	July 2, 1980.
Do	Geneva	Geneva, city of	010085B	Mar. 6, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Mar. 29, 1974 Jan. 9, 1976	Do.
California	San Joaquin	Unincorporated areas	060299A	Feb. 23, 1973, emergency, July 2, 1980, regular, July 2, 1980, suspended.		Do.
Connecticut	New London	Montville, town of	090099B	Nov. 27, 1973, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Oct. 18, 1974 Sept. 3, 1976	Do.
Do	Fairfield	Westport, town of	090019A	Oct. 8, 1971, emergency, July 2, 1980, regular, July 2, 1980, suspended.	July 19, 1974	Do.
Delaware	Kent	Bowers, town of	100002A	June 14, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Aug. 9, 1974	Do.
Florida	Seminole	Casselberry, city of	120291C	Sept. 11, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Feb. 1, 1974 Oct. 10, 1975 Oct. 15, 1976	Do.
Illinois	Madison	Alton, city of	170437B	Mar. 25, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Mar. 8, 1974 Jan. 9, 1976	Do.
Do	Cook	Blue Island, city of	170064C	Jan. 10, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Mar. 22, 1974 Feb. 20, 1978 May 19, 1980	Do.
Do	Dupage	Clarendon Hills, village of	170203B	Aug. 29, 1973, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Mar. 8, 1974 Dec. 26, 1975	Do.
Maine	Oxford	Denmark, town of	230476A	May 7, 1976, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Dec. 24, 1976	Do.
Do	Franklin	Strong, town of	230061B	Aug. 21, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	June 14, 1974 July 23, 1976	Do.
Massachusetts	Franklin	Barnardston, town of	250110A	Feb. 4, 1976, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Dec. 10, 1976	Do.
Do	do	Charlemont, town of	250112B	July 1, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Aug. 2, 1974 Aug. 13, 1976	Do.
Do	do	Colrain, town of	250113B	Sept. 3, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	July 26, 1974 Aug. 27, 1976	Do.
Do	Essex	Danvers, town of	250079B	July 22, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	July 26, 1974 Jan. 7, 1977	Do.
Do	do	Methuen, town of	250093B	June 26, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Aug. 30, 1974 Apr. 8, 1977	Do.
Do	Dukes	Oak Bluffs, town of	250072A	Feb. 8, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	July 19, 1977	Do.
Do	Bristol	Raynham, town of	250061A	June 23, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Aug. 9, 1974 July 30, 1976	Do.
Do	Franklin	Shelburne, town of	250127B	July 22, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	July 28, 1974 Feb. 4, 1977	Do.
Do	Middlesex	Woburn, city of	250229B	June 26, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Aug. 2, 1974 June 28, 1977	Do.
Michigan	Genesee	Grand Blanc, city of	260255B	May 20, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	July 11, 1975 June 4, 1976	Do.
Do	do	Montrose, township of	260398A	July 29, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	June 27, 1975	Do.
Minnesota	McLeod	Glencoe, city of	270263B	June 18, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	June 7, 1974 Aug. 13, 1976	Do.
Do	Washington	Newport, city of	270510B	Feb. 15, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Mar. 22, 1974 Jan. 23, 1976	Do.
Montana	Dawson	Glendive, city of	300015B	Mar. 19, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Feb. 15, 1974 Jan. 23, 1976	Do.
New Mexico	Santa Fe	Santa Fe, city of	350070B	Feb. 13, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	May 10, 1977	Do.
New York	Steuben	Erwin town of	360774B	Mar. 23, 1973, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Nov. 23, 1973 Sept. 10, 1976	Do.
Do	Erie	Lackawanna, city of	360247B	Jan. 17, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	June 28, 1974 Aug. 13, 1976	Do.
Do	Rensselaer	Sand Lake, town of	361167A	Feb. 2, 1976, emergency, May 15, 1980, regular, July 2, 1980, suspended.	Dec. 27, 1974	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special hazard area identified	Date ¹
Ohio	Cuyahoga	Chagrin Falls, city of	390103B	July 29, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Mar. 15, 1974 May 7, 1976	Do.
Do	Trumbull	Girard, city of	390536B	Aug. 27, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Jan. 23, 1974 May 21, 1976	Do.
Oklahoma	Creek	Drumright, city of	400052B	June 12, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Nov. 23, 1973 May 31, 1977	Do.
Do	Muskogee	Muskogee, city of	400125B	Apr. 22, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Mar. 22, 1974 Jan. 2, 1976	Do.
Do	Kay	Ponca City, city of	400080B	Mar. 6, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Feb. 1, 1974 Dec. 24, 1976	Do.
Do	Potawatamie	Shawnee, city of	400178B	Apr. 2, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Dec. 27, 1974 May 21, 1976	Do.
Pennsylvania	Allegheny	Harmar, township of	421068B	June 3, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Sept. 6, 1974 July 30, 1976	Do.
Do	Berks	Mohnton, borough of	420142B	Jan. 23, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Dec. 28, 1973 May 7, 1976	Do.
Do	York	Newberry, township of	422226B	July 19, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Oct. 18, 1974 Jan. 30, 1976	Do.
Do	Allegheny	O'Hara, township of	421088B	Dec. 3, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Sept. 20, 1974 Nov. 14, 1975	Do.
Do	Tioga	Putnam, township of	420824B	Aug. 29, 1973, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Feb. 1, 1974 Oct. 1, 1976	Do.
Do	do	Richmond, township of	420825B	Aug. 1, 1973, emergency, July 2, 1980, regular, July 2, 1980, suspended.	May 3, 1974 May 21, 1976	Do.
Do	Luzerne	Sugarloaf, township of	420997B	Dec. 17, 1973, emergency, July 2, 1980, regular, July 2, 1980, suspended.	May 3, 1974 June 18, 1976	Do.
Do	Montgomery	Towamencin, township of	422236A	June 21, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Jan. 31, 1975	Do.
South Carolina	Orangeburg	Holly Hill, town of	450163	Aug. 19, 1976, emergency, July 2, 1980, regular, July 2, 1980, suspended.	June 7, 1974 Apr. 23, 1976	Do.
South Dakota	Pennington	Box Elder, city of	460089	June 7, 1974, emergency, May 15, 1980, regular, July 2, 1980, suspended.	Oct. 25, 1974	Do.
Tennessee	Williamson	Franklin, city of	470206B	Sept. 25, 1974, emergency, July 2, 1980, regular, July 2, 1980, suspended.	May 31, 1974 Apr. 23, 1976	Do.
Do	Marion	Unincorporated areas	470114A	Oct. 23, 1973, emergency, May 15, 1980, regular, July 2, 1980, suspended.	Oct. 28, 1977	Do.
Do	Franklin	Winchester, city of	470056B	May 9, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	June 14, 1974 Oct. 22, 1976	Do.
Vermont	Windsor	Bridgewater, town of	500144B	Nov. 13, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Aug. 16, 1974 Feb. 18, 1977	Do.
Do	Rutland	Poultney, town of	500099B	July 24, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	June 28, 1974 Feb. 11, 1977	Do.
Do	do	Poultney, village of	500266B	Aug. 5, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	Dec. 6, 1974 Nov. 29, 1977	Do.
Virginia	Wise	Coeburn, town of	510176B	Mar. 6, 1975, emergency, July 2, 1980, regular, July 2, 1980, suspended.	May 10, 1974 Aug. 13, 1976	Do.

¹Certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: June 12, 1980.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 80-16789 Filed 6-23-80; 8:45 am]

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Proposed Rules

Federal Register

Vol. 45, No. 123

Tuesday, June 24, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Food Distribution Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rules.

SUMMARY: The Food and Nutrition Service proposes to amend the regulations governing the food distribution program to revise and strengthen provisions which permit distributing agencies, subdistributing agencies, and recipient agencies to employ commercial or institutional facilities to process USDA-donated foods by converting them into different end products or by repackaging them.

DATE: To be assured of consideration, comments must be received on or before August 25, 1980.

ADDRESS: Comments should be sent to: Darrel E. Gray, Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, DC 20250 (202-447-8371). Comments in response to this notice may be inspected at 500 12th Street, S.W., Room 610, Washington, DC, during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

SUPPLEMENTARY INFORMATION:

Introduction

The regulations for food distribution permit distributing agencies,¹ subdistributing agencies,² and recipient

¹ "Distributing agencies" are those State agencies designated by the Governor or State legislature which enter into agreements with USDA to distribute foods acquired under various legislative authorities cited in the regulations to eligible domestic outlets.

² "Subdistributing agencies" are agencies under agreement with distributing agencies to perform one of more distribution functions, excluding overall management and control of the distribution program. School districts are commonly subdistributing agencies.

agencies,³ to contract with commercial or institutional facilities to process USDA-donated foods into different end products or by repackaging them. This authority has existed since the regulations were first issued in October 1958, but only since the early 1970's has the Department taken an active role in encouraging donated-food processing after the foods have been made available at the State level. The impetus came from legislative changes in child nutrition legislation guaranteeing a designated level of commodity assistance based on meals served within each State.

As the supply of agricultural commodities became more constant, States and schools saw the opportunity to convert donated products into more convenient or table-ready forms. This change has helped expand donated-food use from a limited number of commodities to a broader array of products processed from them. For example, a quantity of donated flour becomes a quantity of bread, crackers, cookies, pizzas, and many other precooked or ready-to-serve items.

As the food distribution program took on new dimensions, State agencies, schools, and the food industry have come more involved in processing activities. As of July 1979, 38 agencies had processing contracts with about 425 food companies. During school year 1979, the value of school entitlements for donated foods amounted to approximately \$596 million. These entitlements consisted of some \$400 million in foods purchased either under section 32 of Pub. L. 74-320 or section 6 of the National School Lunch Act and some \$196 million in price-supported foods acquired under section 416 of the Agricultural Act of 1949. In addition to the entitlements, price-supported foods valued at nearly \$70 million were donated from schools in school year 1979. Section 416 foods are particularly suitable for processing contracts. While flour is probably the largest single item converted under these contracts, cheese and other dairy items, peanut products, oils, meat and poultry, and many other donated foods, also lend themselves to processing in one form or another.

³ "Recipient agencies" are schools, charitable institutions, and other eligible outlets under agreement with distributing agencies to receive donated foods for food service programs and other authorized uses.

USDA does not currently maintain data on the volume of donated foods being processed but estimates that it may be as much as 20 percent of the total amount distributed.

Processing contracts have come under close scrutiny as a result of a national audit conducted in fiscal year 1978 by the Department's Office of the Inspector General (OIG). The audit, which was requested by the Food and Nutrition Service (FNS) included 18 large firms doing business with 10 State agencies in 5 of the 7 FNS Regions. OIG's report of its comprehensive audit was released on March 29, 1979 and revealed significant problems in the receipt, use and disposition of donated foods by commercial processors. These proposed regulations reflect the Department's concern for stricter contractual provision, improved accountability, increased monitoring requirements, and overall clarification processing provisions.

Public comments on the changes discussed below are invited and should be received at the above address on or before August 25, 1980.

Audit Background and Findings

USDA has responsibility for distributing foods acquired under legislative authorities controlling price-support, surplus-removal, and market-price activities. These foods are donated to State distributing agencies for distribution to various federally assisted feeding programs. The principal recipient of donated foods are schools and institutions participating in the National School Lunch Program and other USDA child nutrition programs. Recipient agencies also include public and nonprofit charitable institutions and nutrition programs for the elderly funded under Title III of the Older Americans Act of 1965, as amended. Distributing agencies are responsible for making foods available to recipient agencies in accordance with program requirements. Current regulations provide that distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with private commercial firms or with institutional facilities to convert donated foods into different end products or to repackage them.

FNS requested a national audit because of the danger of misuse and diversion of donated foods in the system

of processing. The audit's objectives were to determine if (1) contractual provisions complied with current regulations, (2) inventories of donated foods placed with processors were properly accounted for and managed in an efficient manner, (3) food processors were passing on maximum benefits of donated foods to recipient agencies, and (4) program weaknesses existed which could allow fraudulent or wasteful practices to occur.

OIG determined that processing activities were not being conducted in a manner which assured that recipient agencies were receiving maximum benefits from end products containing donated foods. The audit report revealed that wasteful and possibly fraudulent practices have occurred in processing as a result of inadequate Federal guidelines and insufficient monitoring by USDA headquarters, FNS Regional Offices, and State agencies. OIG recommended that USDA provide needed guidance to Regional Offices and distributing agencies by strengthening regulations with regard to contractual provisions, substitution of donated foods with commercially purchased foods, labeling requirements, use of commercial distributors, inventory management and overall program supervision.

Antifraud Provisions

OIG expressed concern that at the time the audit report was issued these regulations did not contain penalty provisions for the theft or misuse of donated foods. However, on June 5, 1979, FNS issued a final rule (44 FR 32193) amending Part 250 to incorporate the antifraud provisions of section 12(g) of the National School Lunch Act, as amended by Pub. L. 95-627, effective October 1, 1978. Section 12(g) provides that whoever embezzles, willfully misapplies, steals, or obtains by fraud any child nutrition program funds, assets, or property or whoever conceals or retains such funds, assets, or property to his own use or gain, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen, or obtained by fraud is subject to Federal criminal penalties. The provisions of Section 12(g) appear in § 250.10(a-1) of these regulations and are clearly applicable to foods USDA donates for use in the National School Lunch Program, School Breakfast Program, Summer Food Service Program for Children, and Child Care Food Program. These provisions also apply to processed end products containing foods donated for these programs and to any funds deriving from such donations.

Scope of Revised Processing Provisions

These proposed rules revise and expand the main provisions currently contained in § 250.6(m) and incorporate them into a new § 250.14, which includes a paragraph listing definitions applicable to the new section. These will be incorporated into the main listing of definitions (now in § 250.3) when Part 250 is revised and republished, as announced June 22, 1979 (44 FR 36396). Provisions in § 250.6(q) have been revised and re-ordered to include, in new subparagraphs (1), (2), and (4), specific references to processing; in addition, a new subparagraph (6) has been added to indicate that failure to maintain records required by paragraph (q) shall be considered evidence of improper distribution or loss of donated foods. Also in § 250.6, a new paragraph (v) is added to require, effective for fiscal year 1982, a State Plan of Operation for food distribution.

In addition to the processing component of the plan, which is discussed under the next subject heading, distributing agencies would be required to develop for inclusion in the plan one or more standard form contracts for required use within the State. The agencies would have the option of developing either a single prototype contract or multiple contracts for use in specific types of processing activities. The proposed rules would also require each distributing agency to develop a processing contract manual for guidance of recipient agencies and processors. FNS will issue guidelines for developing these and manuals subsequent to publication of final rules.

In § 250.10, paragraph (e), dealing with availability of copies of processing contracts, has been revised and transferred to new § 250.14(t).

In the purpose statement of § 250.14(a), subparagraph (2) indicates that the provisions for processing contracts do not apply to food service management companies as defined in § 250.14(b)(7). The new provisions would, however, be applicable to vendors of preplated or other meals containing donated foods.

Processing Component of State Plan of Operations

The current regulations for food distribution do not require a State Plan of Operation except with respect to distribution to needy persons in households. However, as a condition for a distributing agency to approve processing contracts after issuance of the final rules, the agency would be required to develop and have approved by FNS, a processing component of the

overall State Plan of Operations for Food Distribution to be provided for in § 250.6(v). The Plan of Operations will be subject to the requirements of Office of Management and Budget Circular A-95, Part III, concerning prior submission of such plans for comment by the Governor, or his delegated agency, on their relationship to other State plans and programs. The first State Plan will be due no later than May 15, 1981; the other components of the plan will be proposed when Part 250 is revised and republished. The processing component will furnish standards against which FNS can evaluate State agencies' supervision of processing activities.

As part of the plan, each distributing agency would (1) describe the method of delivery of end products, (2) provide copies of the standard processing contracts used and the processing manual, (3) indicate its capabilities and plans for monitoring processing activities during the next fiscal year, and (4) describe the manner in which it will cooperate with the administering agency for USDA child nutrition programs where the latter is not also the distributing agency.

The regulations governing State Administrative Expense (SAE) Funds (7 CFR Part 235) were amended on August 31, 1979 (44 FR 51183) to guarantee each State agency which distributes donated foods to schools a minimum of \$30,000 each year in discretionary funds available under Section 7 of the Child Nutrition Act of 1966. In addition to this amount the agencies may receive a prorata share of any SAE funds which remain after other allocations; these additional payments are based on the volume of USDA foods distributed in child nutrition programs during the second preceding fiscal year. One of the objectives in authorizing these payments, which became effective for fiscal year 1979, was to provide additional funding support for qualified staff needed to supervise and monitor processing contracts for school feeding. In the light of this newly available financial assistance, FNS believes it is reasonable to require that monitoring standards be developed for inclusion in the processing component of the State plan.

Permissible Contractual Arrangements

Section 250.14(d) describes generally the methods by which processing contracts may be entered into. When end products are to be delivered to recipient agencies through the State agency's own distribution system the contract between the State agency and processor would provide only for payment of a fee for service for the

processing costs. Recipient agencies purchasing end products under this arrangement would reimburse the State agency for the processing cost plus the value of any commercial foods contained in the products. When such delivery is to be made directly by the processor or indirectly by an independent distributor, the contract would provide for purchase of end products by one or more recipient agencies. Under this arrangement, the contract would be entered into by the distributing agency or a subdistributing agency on behalf of each recipient agency eligible to receive the donated foods contained in the end products to be sold; such recipient agencies would become parties to the contract by virtue of the donated-food agreement entered into with the distributing agency or subdistributing agency, as required by § 250.6(b) of the regulations. Use of this method would necessitate a specific provision or addendum to the donated food agreement in which the recipient agency authorizes the contracting agency to act on its behalf. Section 250.14(d) would also permit a subdistributing agency or recipient agency to contract directly for processing on its own behalf, provided the distributing agency approves the contract. The main changes contained in the new paragraph from the present provisions in § 250.6(m)(1) concern the use of independent distributors and references to the discount and refund methods of payment for end products. These are discussed in the following two sections of this preamble.

Role of Commercial Distributors

Nearly all processors included in the audit were using independent commercial distributors to sell products containing donated foods to recipient agencies. The arrangements were considered necessary because most processors do not have the capability of distributing their own products. However, the auditors' review found that use of distributors did not permit full accountability for donated foods or in all cases assure the most equitable or economical delivery. Several instances were discovered where ineligible outlets were purchasing products containing donated foods from distributors. In other instances, eligible purchasers were not receiving credit for the donated foods' value.

FNS considers that optimum accountability is afforded under the arrangement described in the proposed § 250.14(d)(1), whereby processing is accomplished under a fee for service and end products are distributed by the State agency itself. However, it must be

recognized that very few distributing agencies are adequately staffed or equipped to handle the large volume of products being processed. Further, FNS believes that limiting processing contracts to the minority of food companies which maintain their own facilities for sales and deliveries would provide them with an unfair advantage over other processors and would unduly limit contracting agencies' choices of processors.

In revising the regulations, FNS considered formalizing the role of the commercial distributor by requiring that it become a party to the processing contract when it will deliver a processor's end products. However, FNS believes that it is essential that the processor remain fully accountable for donated foods delivered into its possession. To make a distributor a party to the contract would weaken that accountability. For this reason the proposed regulations, while authorizing use of distributors under specific conditions, make it clear that the processor and the processor alone shall be fully accountable for the donated foods contained in processed products until eligible recipient agencies have received credit for the value of the foods either under a discount or refund system. Further, the proposed regulations would restrict the types of donated foods that may be contained in end products handled by commercial distributors to those designated as substitutable—discussed elsewhere in this preamble. Finally, the processor's full accountability for the value of such donated foods would be assured by restricting the method of sales by distributors to the refund system.

Discount and Refund Systems

The current regulations do not prescribe methods for payment for processed end products when processing is performed on other than a fee for service basis. Two basic methods are in common use when end products are sold to recipient agencies directly by processors or indirectly by commercial distributors. These are the discount and refund systems, defined respectively in subparagraphs (4) and (13) of § 250.14(b), which are proposed as the only permissible alternatives to payment of a fee for service.

The discount system would be applicable only when end products are sold directly to recipient agencies by the processor, and proposed § 250.14(f) would require the contract to include the processor's wholesale price schedule for quantity purchases of each end product. Under this system, the recipient agency would purchase the end product at the

applicable wholesale price, less the per-pound value of donated foods established in the contract. Thus, the value of donated foods would be immediately realized by the recipient agency at the time of purchase.

Where processed products are sold by independent distributors, sales would be under a refund system, and end products sold could contain only foods listed as substitutable with commercial foods in § 250.14(h). This method permits sales of end products at the distributor's normal wholesale prices, with subsequent refunds by the processor in amounts equal to the contracted donated-food value upon application by eligible purchasers. The proposed regulations would also permit use of the refund system in direct sales by processors themselves, at the discretion of the distributing agency approving the processing contract.

The OIG report expressed several reservations about the refund system as it was operating at the time of the audit. Foremost among these was its finding that frequently schools which had purchased processed products either did not know that they were entitled to cash refunds based on donated food value in the products or knowingly neglected to apply for the refunds. Instances were also found where processors who had sold end products to commercial distributors reduced their inventories before payment of refunds. Other processors utilizing the method frequently delayed making refunds for extended periods.

A few instances were found where end products were sold by distributors to ineligible outlets, which had applied for and received refunds from processors. Further, OIG discovered situations where the net price, after refund, paid by eligible recipient agencies was higher than that paid by purchasers who received no refund.

Under the system proposed, refund applications certifying purchase of an end product containing donated foods would be submitted by recipient agencies within a designated time period. The distributing agency would be responsible for encouraging prompt submission by all eligible purchasers. Applications would be verified by the State agency before forwarding to the processor, which would be allowed 30 days after receipt to make refunds.

The processor's donated-food inventory could not be reduced by the amount of the donated foods contained in end products sold until refunds equal to their value have been made. Under the provisions of § 250.14(l), concerning contract termination, the processor would be required either to return all

donated foods not accounted for by discount or refund payments or to pay the distributing agency the value of such foods.

Value of Donated Foods

The current regulations provide no guidance for determining the value of donated foods, either for purposes of crediting recipient agencies for the donated-food content of end products purchased under a processing contract or for establishing the amount to be paid to a contracting agency when a processor is unable to return donated foods which cannot be accounted for under a contract. These proposed amendments include a definition of "contract value of donated foods" which allows for two possible values, depending on the circumstances of credit or payment. In addition, a distinction is made between the contract value and the amount a processor must pay if it is unable to return donated foods unaccounted for upon the termination of a contract.

Each contract must state, at the approving distributing agency's option, either (1) the USDA delivered cost per pound of the donated foods to be processed, based on the latest data available from USDA, on the date the contract is signed or (2) a lower amount equal to the processor's documented cost per pound, as of that date, of purchased foods meeting the donated foods' exact specifications. (Where the lower cost is approved, § 250.6(q)(4), as amended, would require the processor to maintain records substantiating the lower value.) The amount stated in the contract would be the basis for crediting recipient agencies which purchase end products under either a refund or discount system for the value of donated foods contained therein.

If justified by the distributing agency and approved by FNS, the stated value per pound in the contract could also be used in determining the amount to be paid by a processor for unreturnable foods upon termination of the contract, when termination results from no fault on the part of the processor. Thus, when a contracting State agency or school district wishes to cancel a processing contract for its own convenience, the processor would with FNS approval, base payment for unreturnable foods on the value agreed on for purposes of the contract. Otherwise, the processor would be required to pay the Department's actual cost of replacing donated foods when termination of a contract is at the processor's request or when a dispute concerning performance under a contract arises between the distributing agency and a processor.

Substitution of Commercial Foods for Donated Foods

Section 250.6(m)(3) of the current regulations provides that processing contracts may permit substitution of specified donated foods for commercially purchased foods of equal or better quality whenever depleted inventories of commodities would otherwise hold up production of end products. The section provides that only "butter, flour, rice, rolled oats, rolled wheat, nonfat dry milk, shortening, cornmeal, dried peas, lentils, dried beans, cheese, orange juice, peanut butter, raisins, and such other foods as FNS specifically approves, may be substituted."

The intent of this provision was to eliminate potential problems of bakeries and other processing firms which contract for delivery of end products on a daily basis. In the event that shipments of donated foods were delayed and inventories became depleted, the processor could substitute for the designated items his own commercially purchased food of like or better quality. This provision assured recipient agencies an uninterrupted supply of end products. An additional reason for the substitution provision was to permit processors with limited storage facilities to store and commingle donated items that are received in airslide or tank railcars (such as flour and oil) with their own purchased inventory, where separate storage is impracticable.

The OIG audit found that many processors were not complying with this portion of the regulations and commingled, exchanged, and substituted donated foods with commercial foods without FNS approval. In many cases, there was no assurance that the commercial foods met the donated foods' specifications or that the substituted foods were even of the same type—e.g., cheddar cheese used in place of mozzarella. A few instances were found where high-quality donated beef—which under no circumstances may be substituted—was being diverted to a processor's commercial use and inferior quality beef used in the product delivered to recipient agencies.

Section 250.14(h) of the proposed amendments would expand the present list of substitutable items to include corn grits, peanut granules, roasted peanuts, soybean oil, macaroni and spaghetti. These are foods that can be made available in quantities exceeding the per-meal commodity levels which the Department is required to provide for child nutrition programs. In addition, two foods—orange juice and raisins—

would be removed from the list. These items are purchased under surplus removal programs authorized by section 32 of Pub. L. 74-320, as amended, and are generally available only in quantities limited by States' per-meal entitlements. The current provisions for specific approval of other substitutions would be retained.

Any substitutable donated foods may be commingled with commercial foods as long as the identifiable characteristics of the commercial foods at least meet the minimum specification requirements of the donated foods. Section 250.6(q)(4), as revised, would require processors to maintain records which would permit an accurate determination of the donated-food inventory when commingling takes place. An additional provision would require that all commercial foods substituted for donated foods be of United States origin.

Also eliminated is the present stipulation that substitution only take place in instances where depleted inventories would otherwise hold up production. This requirement is considered unnecessary in the light of permissible commingling. In addition, the revised paragraph would require processors to maintain on file documentation that the identifiable characteristics of the commercial foods substituted at least meet the minimum specification requirements of the donated foods. The types of acceptable documentation will be determined by the applicable Federal acceptance service (discussed below).

The Department proposes to retain substitution provisions in order to encourage processing on an efficient and cost-effective basis. Since the foods listed as substitutable have relatively simple specifications and are widely available from commercial sources, processors could depend on a steady flow of donated products or equivalent commercial products into their plants. At the same time, the requirement for documentation as to product specification would safeguard against substitutions of commercial foods of lesser quality or value.

Labeling of End Products

Before the processing provisions of the present § 250.6(m) were revised in 1976, they include the requirement that containers of end products processed from donated foods or repackaged donated foods be clearly labeled to indicate the USDA origin of the contents and that the products could not be sold or exchanged. When the section was revised in 1976 to permit substitution of designated donated foods, this

requirement was eliminated, since many processed end products would not contain the actual foods that had been donated. The manner in which the containers were labeled and the legend the labels would bear was left to the discretion of the distributing agency approving the processing contract.

Section 250.14(k) of these proposed amendments would require that where end products contain nonsubstitutable foods the exterior shipping containers and, where practicable, the individual label on each end product, clearly state "Contains Commodities Donated by the United States Department of Agriculture. This Product Shall Be Sold Only to Eligible Recipient Agencies." This requirement would provide additional safeguards against improper sale of end products containing foods which USDA donates for programs requiring a specified level of assistance per meal. While end products containing substitutable donated foods may continue to bear the processor's commercial label and be sold to other than eligible recipient agencies, the processor would be responsible for replacement of the entire donated-food inventory unaccounted for through discounts or refund payments to eligible recipient agencies.

Additional provisions would require that all labels meet Federal labeling requirements and that Federal approval must be obtained of any statement on a label claiming that an end product contributes toward meal requirements of any USDA child nutrition program.

Federal Inspection and Acceptance Programs

Section 250.6(m)(5) currently requires that processing of donated meat or poultry products be performed under continuous Federal meat and poultry inspection or under equivalent State inspection programs. Such inspection ascertains sanitary conditions in a processing plant and wholesomeness of end products, but not that an end product meets contract specifications. This provision is retained in proposed § 250.14(i). In addition, paragraph (i) would provide further safeguards against unwholesome or unsanitary end products by requiring such inspection in plants where donated foods are combined with non-donated meat and poultry items.

The OIG audit report indicated numerous instances where processors were not complying with contract specifications. The most frequent noncompliance involved substitutions of commercial products of lesser quality and value for USDA foods. Because the most flagrant abuses observed were

connected with processing of USDA ground beef, the report recommended that the regulations be revised to require continuous use of USDA's Food Safety and Quality Service (FSQS) Acceptance Service during such processing. It was also recommended that the Department consider requiring use of the applicable acceptance service under all processing contracts regardless of the type of end product.

The FSQS Acceptance Service and the Federal Grain Inspection Service provide impartial evaluation and certification that end products meet contract specifications and would assure that USDA donated foods are utilized in the end product. To provide the acceptance service, an official USDA grader, or a grader from a cooperating State agency, examines the product at the manufacturing, processing and/or packaging plant. If the end products meet contract specifications, it is stamped with an official stamp or grademark and a certificate is issued indicating that the products examined comply with the contract specifications. If the product does not meet the specifications, it does not qualify for the official stamp or grademark and, therefore, is not accepted. FSQS provides food acceptance service for dairy products, poultry and eggs, meat and meat products, fruits and vegetables. The Federal Grain Inspection Service provides inspection service for grains and oils. Collectively, these two services would be able to provide evaluation for all end products processed with USDA-donated foods. In addition, the National Marine Fisheries Service of the U.S. Department of Commerce also provides an acceptance service for seafood products, which the Department is authorized to donate for child nutrition and elderly feeding programs.

In revising the regulations, the Department has determined that requiring use of the applicable Federal acceptance service under every processing contract could significantly increase the price of end products purchased by recipient agencies. Such a provision would probably not affect large-scale processors but could eliminate many local bakeries and other small business. Processors utilizing the substitution provisions of proposed paragraph (h), however, would be required to provide documentation as to the specifications of substituted commercial foods; such documentation must be performed by or acceptable to the applicable Federal acceptance service.

In addition to requiring that donated meat and poultry items be processed in plants under continuous meat and poultry inspection for wholesomeness and sanitation, § 250.14(i) would require that all such processing be performed under certification by the Food Safety and Quality Service (FSQS) acceptance service that end products meet contract specifications.

Section 250.14(j) pertains to use of acceptance services during processing of end products containing other nonsubstitutable donated foods. Where the total value of such foods received by a processor under any contract during any one school year represents an acquisition cost to USDA of \$15,000 or more, the processing would have to be performed under acceptance and certification by the appropriate Federal acceptance service to safeguard against unauthorized substitution and to verify that the quantities used are as specified in the contract. Where the total value of nonsubstitutable foods is under \$15,000, the distributing agency could also require use of such acceptance service, but in any event the processing would be subject to audit and review by USDA. Further, a contracting agency could require inspection and certification even when substitutable foods are being processed. The degree of inspection necessary under these nonmandatory circumstances would be determined by the appropriate Federal acceptance service after consultation with the distributing agency.

Inventory Controls and Reports

Review of donated-food inventories in processing plants audited by OIG revealed that several firms were accountable for amounts of donated foods vastly in excess of their needs. Frequently such inventories did not physically exist, indicating that processors had diverted substitutable donated foods to their own commercial use in advance of delivering end products to eligible recipient agencies. Such situations suggested that some processors were using USDA foods, in effect, as interest-free loans. Distributing agencies which had contracted with such firms had no assurance that the firms would either fulfill contract requirements or be able to replace the value of the donated foods.

In order to improve the management of inventories, these proposed regulations require (1) monthly performance reports to State agencies under each processing contract, (2) quarterly inventory reports to FNS by State agencies, and (3) provisions for terminating food distribution to

processors when inventories become excessive.

The current regulations do not specifically require performance reports from processors, although there is such a requirement in an FNS procedural instruction concerning processing. Section 250.14(o) would incorporate this requirement, providing for submission of reports by processors to distributing agencies no later than the final day of the month following the reporting month. The report would include for the reporting month the beginning and ending balances of donated foods, number of end products delivered to each recipient agency, the amount of refund payments made to each recipient agency, and the quantities of donated foods represented by such payments.

Paragraph (p) would require distributing agencies to monitor processors' inventories to ensure that they are not excessive. Any supply greater than a four month supply, based on average monthly use, would be considered to be excessive unless the distributing agency approves a higher level on the basis of a written justification from the processor. The four-month inventory level is considered reasonable in that it takes into account that not more than three months should elapse from the time a processor requests a donated-food shipment until delivery. A four-month supply should allow an ample working inventory for the processor. The paragraph would prohibit the distributing agency from making further distribution to processors with excess inventories until they had been reduced.

A quarterly processing inventory report would be required by paragraph (q) to be submitted by each distributing agency to the FNS Regional Office no later than 45 days following the close of the Federal fiscal quarter. The report format would be designed by FNS and would show for each processor within the State, beginning and ending donated food balances and amounts of donated foods received and used during the quarter.

Interagency Cooperation

There are presently 19 State agencies responsible for food distribution to school lunch and other child nutrition programs but which do not have overall administrative responsibility for such programs.

These are agencies with another primary function than education, such as agriculture, public welfare, or general services. Section 250.6(m)(7) of the current regulations requires cooperation between the distributing agency and the administering agency for child nutrition

programs concerning processing contracts for end products to be used in such programs. The subparagraph provides that the distributing agency shall obtain technical assistance as to whether such end products meet applicable nutritional standards for the child nutrition programs. In addition, the distributing agency is required to furnish reports "as requested" by the administering agency concerning the number of processing contracts, the donated foods utilized, and the identity of the processing companies. The distributing agency must also furnish "such performance reports as are needed" by the administering agency for use in evaluating end-product use in child nutrition programs.

Proposed § 250.14(r) would retain the present requirement for interagency cooperation. However, the requirement for furnishing the reports indicated above has been eliminated. Under the proposal, cooperation would be limited to (1) submission of applicable processing contracts for review by the administering agency prior to the distributing agency's approval, (2) consultation considering labeling requirements, and (3) requests for needed technical assistance.

Accordingly, the food distribution regulations would be amended as follows:

PART 250—FOOD DISTRIBUTION PROGRAM

1. In § 250.6, paragraphs (m), (q), and (r) are revised, and a new paragraph (v) is added, as follows:

§ 250.6 Obligations of distributing agencies.

(m) *Processing of donated foods.* Distributing agencies, subdistributing agencies, and recipient agencies may employ commercial or institutional facilities to process donated foods by converting them into different end products or by repackaging them when such processing is contracted for and performed in accordance with the provisions of § 250.14. For the fiscal year beginning October 1, 1981, and subsequent fiscal years, distributing agencies, prior to entering into or approving processing contracts, shall submit to and receive from FNS approval of (1) the State Plan of Operations required by paragraph (v) of this section, (2) one or more standard form contracts meeting the requirements of § 250.14(e), to be required for use within the State, and (3) a processing contract manual or other procedural material on processing developed by the distributing agency for guidance of

recipient agencies, in accordance with § 250.14(c)(1)(iii).

(q) *Records.* (1) Accurate and complete records shall be maintained with respect to the receipt, disposal, and inventory of donated foods, including (i) end products processed from donated foods and (ii) the determination made as to liability for any improper distribution or use of, or loss of, or damage to, such foods and the results obtained from the pursuit of claims arising in favor of the distributing agency. Such records shall also be maintained with respect to the receipt and disbursement of funds arising from operation of the distribution program, including the determination as to the amount of payments to be made by any processor, as defined in § 250.14(b)(11), upon termination of processing contracts. (2) Distributing agencies shall require all subdistributing and recipient agencies to maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated foods, including end products processed from donated foods, and with respect to any funds which arise from the operation of the distribution program, including refunds made to recipient agencies by processors in accordance with § 250.14(m) of this part. (3) Distributing agencies shall maintain accurate and complete records with respect to amounts and value of commodities refused by school food authorities in accordance with § 250.4(h) and shall require that school food authorities also maintain such records of refusals. (4) Any processor which contracts with a distributing agency, subdistributing agency or recipient agency to process, repackage, or prepare any donated foods shall be required to keep accurate and complete records with respect to the recipient, disposal, and inventory of such foods similar to those required of distributing agencies under this paragraph. Where donated foods have been commingled with commercial foods, the processor shall maintain records which will permit an accurate determination of the donated-food inventory. Where the contract value of donated foods, as defined in § 250.14(b)(2), is lower than the Department's cost of acquiring and delivering such foods on the date a processing contract is signed, the processor shall be required to maintain records to substantiate the lower cost and that the commercial product that would otherwise be purchased is equal to or superior to the donated foods. In addition, the processor shall be required to keep formulae, recipes, daily or batch

production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use made of such foods and their subsequent redelivery (in whatever form) to any distributing agency, subdistributing agency or recipient agency.

(5) All recipient agencies shall be required to keep accurate and complete records showing the data used to determine the number of eligible persons served by that agency. (6) Failure by a distributing agency, subdistributing agency, recipient agency, processor, or other entity to maintain records required by this section shall be considered prima facie evidence of improper distribution or loss of donated foods and shall be subject to the provisions of § 250.6(1). All such records shall be made available for inspection and review upon request by FNS or by the appropriate distributing agency and shall be retained for a period of three years from the close of the Federal fiscal year to which they pertain. However, FNS may, by written notice, require longer retention of any records necessary for resolution of an audit or of any litigation.

(r) *Reports.* Distributing agencies shall submit (1) monthly reports to the FNS Regional Office covering the receipt and distribution of commodities; (2) quarterly processing inventory reports in accordance with § 250.14(g), and (3) such other reports covering distribution operations in such form as may be required from time to time by the Department.

(v) *State Plan of Operations for Food Distribution.* (1) Not later than May 15, 1981 and not later than May 15 of each subsequent fiscal year, each distributing agency shall submit to FNS for approval a State Plan of Operations for Food Distribution. FNS shall provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. The State Plan and all amendments shall be signed by the Chief Officer of the distributing agency. (2) For the fiscal year beginning October 1, 1981, the processing component of such plan shall meet the requirements of § 250.14(c) (3) [Reserved]. (4) Each distributing agency shall submit its State Plan of Operations for Processing to the State Governor, or his delegated authority, for comment on the relation ship of the plan to other State plans and programs. A period of 45 days from the receipt of the State Plan of Operations for Food Distribution shall be afforded for such comments.

§ 250.10 [Amended]

2. In § 250.10, paragraph (e) is deleted.

3. A new § 250.14 is added, as follows:

§ 250.14 Processing of donated foods.

(a) *Purpose.* (1) This section sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for processing of donated foods and prescribes the minimum requirements to be included in such contracts. (2) This section does not pertain to food service management companies utilizing donated foods in the preparation of meals.

(b) *Definitions.* For the purpose of this section:

(1) "Child nutrition programs" means the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program for Children, and the Child Care Food Program.

(2) "Contract value of donated foods" means, at the distributing agency's option (i) the Department's cost of acquiring and delivering the donated foods to be processed based on the most recent data provided by the Department on the date a processing contract is signed, or (ii) the processor's documented cost of purchasing foods meeting or exceeding the donated foods' specifications as of that date as determined by the applicable Federal acceptance service or by a method acceptable to such service.

(3) "Contracting agency" means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

(4) "Discount system" means a system whereby a recipient agency purchases end products directly from a processor at an established wholesale price minus the contracted value of the donated foods contained in the end products.

(5) "Distributor" means a commercial food purveyor or handler who is independent of a processor and sells end products to recipient agencies.

(6) "End product" means a product containing any amount of donated foods which have been processed or repackaged.

(7) "Federal acceptance services" means the acceptance services provided by (1) the applicable grading branches of the Department's Food Safety and Quality Service, (2) the Department's Federal Grain Inspection Service, and (3) the National Marine Fisheries Service of the U.S. Department of Commerce.

(8) "Food service management company" means a commercial

enterprise or a nonprofit organization which is or may be contracted with by a recipient agency to manage any aspect of its food service in accordance with § 250.8(b)(3) or in accordance with § 210.8a of the regulations for the National School Lunch Program.

(9) "Processing" means (i) the conversion of a donated food or donated foods into a different end product or (ii) the repackaging of a donated food or donated foods.

(10) "Processing fee" means the amount charged to a contracting agency for a processor's services.

(11) "Processor" means a commercial or institutional facility, other than a food service management company, which processes or repackages donated foods.

(12) "Performance supply and surety bond" means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

(13) "Refund system" means a system whereby a recipient agency purchases a processor's end products and receives from the processor a payment equivalent to the value of the donated foods contained in the end products.

(14) "Refund application" means an application by a recipient agency in any form acceptable to a distributing agency and processor which certifies purchase of end products and which, upon forwarding to the processor by the distributing agency, obligates the processor to refund the value of the donated food contained in the end products.

(c) *Processing component of State Plan of Operations.* Each distributing agency wishing to enter into or approve processing contracts shall have an approved State Plan of Operations required by § 250.6(v). Approval of the plan shall be a prerequisite to approval by the distributing agency of processing contracts entered into after the date this section becomes effective.

(1) The processing component of the State Plan of Operations shall, as a minimum, include the following:

(i) The methods by which end products are delivered to recipient agencies.

(ii) A copy of the standard processing contract(s) for use within the State.

(iii) A copy of the manual or similar procedural material required by § 250.6(m)(3) for guidance of contracting agencies and recipient agencies, and processors. The manual shall include, as a minimum, a copy of the standard form contract(s) and statements of the distributing agency's policies and procedures concerning (A) contract approval, (B) monitoring and review of

processing activities (C) recordkeeping and reporting requirements (D) inventory controls and (E) refund applications. Copies of the manual shall be provided to the applicable contracting agencies, recipient agencies and processors within 60 days of approval of the State Plan.

(iv) The manner in which the distributing agency will monitor processing activities, which shall include (A) the frequency of onsite reviews of processors and contracting agencies planned for the next fiscal year; (B) procedures for reducing any excess inventories of donated foods among processors in accordance with paragraph (p) of this section, (C) the methods by which the distributing agency will maintain equitable distribution of end products containing donated foods to recipient agencies eligible to receive such foods, in accordance with § 250.6(g), and (D) the number of distributing agency employees whose responsibilities include managerial and monitoring activities or technical assistance.

(v) If the distributing agency is not also the administering State agency for child nutrition programs, the manner in which the distributing agency will cooperate with the administering State agency in accordance with paragraph (r) of this section.

(2) Distributing agencies may submit for approval a revised processing component of the State Plan of Operations or amendments thereto at any time.

(d) *Permissible contractual arrangements.* (1) A distributing agency may contract for processing, pay the processing fee, and deliver the end products to recipient agencies through its own distribution system. (2) A distributing agency or subdistributing agency may contract for processing on behalf of one or more recipient agencies. All recipient agencies eligible to receive the donated foods to be processed may participate in such a processing contract by virtue of the distributing agency/recipient agency agreement required by § 250.6 (b). Under this arrangement, processors (i) shall be required to utilize a refund system when they arrange for end products to be sold indirectly to recipient agencies through a distributor and (ii) may, with the approval of the distributing agency, utilize either a discount or a refund system when they sell end products directly to recipient agencies. (3) A subdistributing agency or recipient agency may also enter into processing contracts with a processor under arrangements similar to those described in subparagraphs (1) or (2) of this paragraph, provided that the

contract has been approved by the distributing agency in accordance with paragraph (n) of this section.

(e) *Requirements for processing contracts.* (1) Contracts with processors shall be in a standard written form approved by FNS and shall terminate no later than one year after they have been approved. However, contracts may be renewed for additional periods of not more than one year by mutual agreement of all parties and upon written approval by the distributing agency, provided that contract performance has been satisfactory. (2) Standard form contracts shall be prepared or reviewed by the appropriate State legal staff to assure conformity with the requirements of these regulations and of applicable Federal, State, and local laws. (3) The contract shall be signed by the owner, a partner, or a corporate officer duly authorized to sign the contract, as follows:

(i) In a sole proprietorship, the owner shall sign the contract.

(ii) In a partnership, a partner shall sign the contract.

(iii) In a corporation, a duly authorized corporate officer shall sign the contract.

(4) As a minimum, each processing contract shall include:

(i) The names and telephone numbers of the contracting agency and processor.

(ii) A description of each end product to be processed, the quantity of each donated food, and the aggregate quantity of all other foods needed to yield a specific unit of each end product, including all conversion and processing loss factors pertaining to the donated food(s).

(iii) The value per pound of each donated food to be processed and, where processing is to be performed only on a fee-for-service basis, the processing fee to the contracting agency for a specified number, weight or measure of the end products to be delivered.

(iv) A provision for (A) termination of the contract upon thirty days' written notice by the contracting agency or the processor and (B) immediate termination of the contract when there has been noncompliance with its terms and conditions by the contracting agency or the processor.

(v) In the event of contract termination, a provision for disposition of donated foods and end products in processor's inventories or payment of funds in accordance with paragraph (1) of this section.

(vi) A provision for inspection and certification during processing, where applicable, by the appropriate

acceptance service in accordance with paragraphs (i) and (j) of this section.

(vii) A provision that end products containing donated foods that are not substitutable under paragraph (h) of this section shall be delivered only to recipient agencies eligible to receive such foods.

(viii) Provisions that the processor shall:

(A) Fully account for all donated foods delivered into its possession by production and delivery to the contracting agency or eligible recipient agencies of an appropriate number of units of end products meeting the contract specifications, and where end products are sold through a distributor, that the processor remains fully accountable for the donated foods until refunds equal to their contracted value have been made to eligible recipient agencies in accordance with paragraph (m) of this section;

(B) Furnish to the contracting agency prior to the delivery of any donated foods for processing a performance supply and surety bond or an irrevocable letter of credit payable in an amount acceptable to the distributing agency;

(C) Use or dispose of the containers in which donated foods are received from the Department in accordance with the instructions of the contracting agency;

(D) Apply as a credit against the processing fee or return to the contracting agency (1) any funds received from the sale of containers, and (2) the market value or the price received from the sale of any by-products of donated foods or commercial foods which have been substituted for donated foods;

(E) Substitute donated foods with commercially purchased foods only in accordance with paragraph (h) of this section;

(F) Meet the requirements of paragraph (k) of this section for labeling end products;

(G) Maintain accurate and complete records pertaining to the receipt, disposal, and inventory of donated foods in accordance with § 250.6(q)(4)

(ix) A provision that approval of the contract by the distributing agency shall in no way obligate that agency or the Department to deliver donated foods for processing.

(5) The processor shall not assign the processing contract or delegate any aspect of processing under a subcontract or other arrangement without the written consent of the contracting agency and the distributing agency.

(f) *End products sold by processors.* When recipient agencies will pay the

processor for end products, the contract shall include (1) the processor's established wholesale price schedule for quantity purchases of specified units of end products, (2) an assurance that the price of each unit of end product purchased by eligible recipient agencies shall be discounted by the stated contract value of the donated foods contained therein, or a refund equal to such value made upon proof of purchase by an eligible recipient agency and (3) a provision that the distributing agency shall give the processor a list of all recipient agencies eligible to purchase end products under the contract.

(g) *End products sold by distributors.* When a processor transfers end products to one or more distributors for sale and delivery to recipient agencies, such sales shall be only under a refund system and only include foods that are substitutable under paragraph (h) of this section. The processor shall make refund payments to such agencies in accordance with paragraph (m) of this section.

(h) *Substitution of donated foods with commercial foods.* The processing contract may provide that the processor may substitute for donated foods a like quantity of the same foods of equal or better quality. If such a provision is included, the contract shall stipulate that (1) only butter, cheese, corn grits, cornmeal, dried beans, dried peas, flour, lentils, macaroni, nonfat dry milk, peanut butter, peanut granules, roasted peanuts, rice, rolled oats, rolled wheat, shortening, soybean oil, spaghetti, and such other foods as FNS specifically approves may be substituted and (2) the processor must maintain on file documentation that the commercial foods substituted for those donated are of domestic origin and are at least equal to the minimum specification requirements of the donated foods. Such documentation must be made available for review and audit by the USDA, including the applicable Federal acceptance service. The applicable Federal acceptance service shall determine if the identifiable characteristics of the substituted commercial foods meet at least the minimum specification requirements of the donated food. When there is substitution in accordance with this paragraph, the donated foods may be utilized by the processor in its own commercial product but shall not otherwise be sold or disposed of in commercial channels.

(i) *Meat and Poultry inspection and acceptance programs.* When donated meat or poultry products are processed or when any commercial meat or poultry

products are incorporated into an end product containing one or more donated foods, all the processing shall be performed in plants under Federal meat or poultry inspection, or under State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection program. Furthermore, all processing of donated meats and poultry must be performed under Food Safety and Quality Service (FSQS) acceptance service. FSQS acceptance service must certify that the end product meet contract specifications. The cost of this service shall be borne by the processor.

(j) *Certification by acceptance service.* (1) When donated foods (other than meat and poultry) that are not substitutable under paragraph (h) of this section are processed and the total dollar value of the commodities received by the processor during any school year represents an acquisition cost to the Department of \$15,000 or more, the processing shall be performed under continuous acceptance and certification by the applicable Federal acceptance service to insure against unauthorized substitution and to verify that the quantities of donated foods utilized are as specified in the processing contract. The cost of this service shall be borne by the processor. (2) When the volume of nonsubstitutable donated foods received by a processor during any school year represents an acquisition cost to the Department below \$15,000, all processing activities shall be subject to review and audit by the Department, including the applicable Federal acceptance service. The contracting agency may also require acceptance and certification by such acceptance service. (3) Contracting agencies may require that end products processed from substitutable donated foods shall also be subject to such acceptance and certification. In the case of substitutable donated foods, the contracting agency requiring Federal acceptance service should consider the dollar value of the donated foods delivered to the processor. (4) When contracting agencies require certification in accordance with subparagraphs (2) or (3) of this paragraph, the degree of acceptance and certification necessary under the processing contract shall be determined by the appropriate Federal acceptance service after consultation with the distributing agency concerning the type and value of the donated foods and anticipated volume of end products to be processed. The cost of this service shall also be borne by the processor.

(k) *Labeling end products.* (1) Except when end products contain donated

foods that are substitutable under paragraph (h) of this section, the exterior shipping containers of end products and, where practicable, the individual wrappings or containers of end products, shall be clearly labeled "Contains Commodities Donated by the United States Department of Agriculture. This product Shall Be Sold Only to Eligible Recipient Agencies." (2) Labels on all end products shall meet applicable Federal labeling requirements. (3) When a processor makes any claim with regard to an end product's contribution toward meal requirements of any child nutrition program, the processor shall follow procedures established by FNS, the Food Safety and Quality Service of the Department, or the National Marine Fisheries Service of the U.S. Department of Commerce for approval of such labels.

(1) *Termination of processing contracts.* (1) When contracts are terminated (i) at the request of a processor, where there has been no fault or negligence on the part of the contracting agency, or (ii) at the distributing agency's request, where there has been noncompliance on the part of the processor with the terms or conditions of the contract, or if any right thereunder in favor of the contracting agency is threatened or jeopardized by the processor, the processor shall at the option of the contracting agency and FNS:

(A) When feasible and with the concurrence of any affected distributing agency(ies), transfer all donated food inventories to other distributing agency(ies) with which the processor has contracted;

(B) Return all donated foods unaccounted for or replace them with a like quantity of the same foods of equal or better quality as certified in accordance with paragraph (h)(2) of this section and return such purchased foods at the processor's expense to a destination designated by the distributing agency; or

(C) Pay the distributing agency an amount equal to the Department's cost, based on the most recent data provided by the Department, as of the date of termination, of replacing the foods which cannot be returned to the distributing agency.

(2) When contracts are terminated at a contracting agency's request, where there has been no fault or negligence on the part of the processor, the processor shall:

(i) When feasible and with the concurrence of any affected distributing agency(ies), transfer all substitutable donated food inventories to other

distributing agency(ies) with which the processor has contracts;

(ii) Return the donated foods unaccounted for or replace with a like quantity of the same foods of equal or better quality as certified in accordance with paragraph (h)(2) of this section and return such purchased foods to a destination designated by the distributing agency, with transportation charges for such shipments borne by the contracting agency; or

(iii) Pay the distributing agency an amount equal to the Department's cost, based on the cost recent data provided by the Department, as of the date of termination, of replacing the foods which cannot be returned to the distributing agency or, with FNS approval, pay the distributing agency an amount equal to the stated contract value of donated foods in the processor's inventory.

(3) Funds received by distributing agencies upon termination of contracts shall, at the option of FNS, be (i) used to replace the donated foods in kind, (ii) used by the distributing agency in accordance with § 250.6(j) or (iii) paid to the Department.

(m) *Refund payments.* (1) When end products are sold to recipient agencies in accordance with the refund provisions of paragraphs (f) or (g) of this section, the contracting agency shall encourage each recipient agency to submit refund applications promptly. In no event shall such applications be submitted later than 90 days after the close of (i) the school year to which they pertain by schools or (ii) the fiscal year to which they pertain by other recipient agencies. (2) The distributing agency shall review each application to verify that the recipient agency is an eligible purchaser and forward the application to the processor within a reasonable length of time. (3) Not later than 30 days after receipt of the application by the processor, the processor shall make a payment to the recipient agency equal to the stated contract value of the donated foods contained in the purchased end products covered by the application.

(n) *Contract approval.* Distributing agencies shall review and approve processing contracts entered into by subdistributing and recipient agencies prior to the delivery of commodities for processing under such contracts. The distributing agency which enters into or approves a processing contract shall provide a copy of the contract and of these regulations to the processor, forward a copy to the appropriate FNSRO, and retain a copy for its files.

(o) *Performance reports.* Processors shall be required to submit to distributing agencies monthly reports of

performance under each processing contract in a format to be provided by FNS. Performance reports shall be received no later than the final day of the month following the reporting period. The report shall include:

(i) A list of all recipient agencies purchasing end products under the contract and the number of units of end products delivered to each during the reporting period;

(ii) Donated-food inventory at beginning of the reporting period;

(iii) Amount of donated foods received during reporting period;

(iv) Donated-food inventory at end of reporting period;

(v) Amount of refund payments made to each recipient agency during the reporting period and the number of pounds of each donated food represented by such payments.

(2) Distributing agencies shall review and analyze reports submitted by processors to insure that performance under each contract is in accordance with the provisions set forth in this section.

(p) *Inventory controls.* Distributing agencies shall monitor inventories to ensure that the quantity of donated foods for which a processor is accountable is the lowest cost-efficient level but in no event more than a four-month supply based on the processor's average monthly usage unless a higher level has been specifically approved by the distributing agency on the basis of a written justification submitted by the processor. Distributing agencies shall make no further distribution to processors whose inventories exceed these limits.

(q) *Processing inventory reports.* Distributing agencies shall submit to the FNS Regional Office not later than 45 days following the close of each Federal fiscal quarter a report in a form prescribed by FNS showing separately for each processor under agreement with contracting agencies within the State:

(1) The donated-food inventory at the beginning of the previous quarter;

(2) Amounts of donated foods received during the quarter;

(3) Amounts of donated foods used during the quarter; and

(4) Inventory at the close of the quarter.

(r) *Cooperation with administering agencies for child nutrition programs.* If the distributing agency which enters into or approves contracts for end products to be used in a child nutrition program does not also administer such program, it shall collaborate with the administering agency by (1) giving that agency an opportunity to review all such

contracts to determine whether end products to be provided contribute to required nutritional standards for reimbursement under the applicable regulations for such program (7 CFR Parts 210, 220, 225, and 226) or are otherwise suitable for use in such program; (2) consult with that agency with regard to the labeling requirements for the end products; and (3) otherwise request technical assistance as needed from that agency.

(s) *FNS Regional Office review of contracts and inventory reports.* The FNS Regional Office shall (1) review all processing contracts and provide guidance, including written recommendations for termination, where necessary, to distributing agencies concerning any contracts which do not meet the requirements of this section, (2) allow distributing agencies 30 days to respond to any recommendation concerning contracts not meeting the requirements of this section, (3) review and analyze the processing inventory reports required by paragraph (q) of this section to insure that no additional donated foods shall be distributed to processors with excess inventories, and (4) assist distributing agencies in reducing such inventories.

(t) *Availability of copies of processing contracts.* Contracts entered into in accordance with this section are public records and FNS will provide copies of such contracts to any person upon request. The FNS Regional Office shall retain copies of processing contracts submitted by distributing agencies for a period of three years from the close of the fiscal year to which they pertain.

* * * * *

Note.—The report and/or recordkeeping requirements contained in this proposed rule will be submitted to the Office of Management and Budget for approval under the Federal Reports Act of 1942.

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations" and has been classified as "significant." An approved Draft Impact Analysis statement is available from Darrel E. Gray, Director, Food Distribution Division, FNS, U.S. Department of Agriculture, Washington, DC 20250, 202-447-8371.

Dated: June 18, 1980.
Carol Tucker Foreman,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-19006 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service**7 CFR Part 910****Handling of Lemons Grown in California and Arizona; Proposed Amendment of Rules and Regulations****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

SUMMARY: This notice invites written comments on a proposed amendment to the rules and regulations to permit the optional use of upward adjustments by handlers in Districts 1 and 3 during the 1980-81 season of not to exceed 100 percent of their average weekly pick. This would allow such handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

DATES: Comments must be received not later than July 21, 1980. Proposed effective date: August 1, 1980.

ADDRESS: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Draft Impact Analysis describing options considered in developing this proposed rule and the impact of each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and classified "not significant." The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act. The proposed amendment to the rules and regulations was recommended by the Lemon Administrative Committee. The rules and regulations (Subpart—Rules and Regulations; 7 CFR 910.100-910.180) are effective pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural

Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Under the order the prorate base of each handler is based upon the handler's average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the order provides that the handlers in such districts may request and be granted an upward adjustment in their average weekly pick to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season of the extra allotment received. The order provides in § 910.53(h) that the percentage of adjustment, specified in §§ 910.53(f)(1) and 910.153(e)(3), may be changed. Provision for 100 percent upward adjustment of average weekly pick of handlers in Districts 1 and 3 is currently in effect through July 31, 1980. Unless extended, the maximum upward adjustment permitted is 50 percent. The committee recommended that the current provision be extended to permit the optional use of upward adjustments by handlers in Districts 1 and 3 of not to exceed 100 percent of their average weekly pick during the 1980-81 season. This would allow such handlers the continued option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

This added flexibility would be provided by an amendment to § 910.153(e)(3) Subpart—Rules and Regulations (7 CFR 910.100-910.180). As proposed to be amended, § 910.153(e)(3) would read as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**§ 910.153 Prorate bases and allotments.**

(e) * * *

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.* Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of such handler's average weekly pick: *Provided*, however, that during the period August 1, 1980, through July 31, 1981, upon request of any such handler, the committee shall adjust such handler's average weekly pick in the

amount requested but not in excess of 100 percent.

* * *

Dated: June 19, 1980.

D. S. Kuryloski,
Deputy Director, Fruit and Vegetable
Division, Agricultural Marketing Service.

[FR Doc. 80-19009 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 921**Handling of Fresh Peaches Grown in Designated Counties in Washington; Proposed Grade and Size Requirements****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed rule.

SUMMARY: This notice invites written comments on a proposed regulation which would establish minimum grade and size requirements on shipments of fresh Washington peaches during the period August 1, 1980, through July 31, 1981. These requirements are designed to provide for orderly marketing in the interest of producers and consumers.

DATES: Comments must be received not later than July 21, 1980.

ADDRESSES: Send two copies of comments to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Draft Impact Analysis describing options considered in developing this proposed rule and the impact of each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and classified "not significant." The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act. The proposed regulation would be issued under the marketing agreement and Order No. 921 (7 CFR Part 921) regulating handling of fresh peaches grown in designated counties in Washington, effective under the Agricultural Marketing Agreement Act

of 1937, as amended (7 U.S.C. 601-674). The proposed regulation was recommended by the Washington Fresh Peach Marketing Committee.

The recommendations of the committee reflect its appraisal of the crop and current and prospective market conditions. The committee expects fresh shipments of Washington peaches in 1980 to total 9,300 tons, compared with 8,628 tons last season. The proposed regulation is designed to prevent the handling of peaches of a lower quality or smaller size than specified and to provide ample supplies of good quality fruit in the interest of producers and consumers.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Such proposal reads as follows:

§ 921.317 Peach Regulation 17.

(a) During the period August 1, 1980, through July 31, 1981, no handler shall handle any lot of peaches unless such peaches meet the following applicable requirements, or are handled in accordance with subparagraph (5) of this paragraph.

(1) *Minimum grade.* Such peaches shall grade at least Washington Extra Fancy Grade: *Provided*, That peaches which grade Washington Fancy Grade or better may be handled if they are packed in the western lug box or the standard peach box.

(2) *Minimum size.* (i) Such peaches of any variety, except peaches of the Elberta varieties, when packed in any container except the standard peach box, shall measure not less than 2 3/4 inches in diameter;

(ii) Such peaches of any variety when packed in the standard peach box shall measure not less than 2 1/4 inches in diameter; and

(iii) Such peaches of the Elberta varieties when packed in any container shall measure not less than 2 1/4 inches in diameter.

(3) *Uniform firmness.* Such peaches in individual containers shall have a reasonably uniform degree of firmness.

(4) *Pack.* (i) Such peaches in loose or jumble packs shall be in containers of a capacity equal to or greater than that of a western lug box and shall contain not less than 26 pounds net weight of peaches: *Provided*, That such containers of peaches having less than 26 pounds net weight may be handled if such containers are well filled; and

(ii) Such peaches other than peaches in loose or jumble packs in any containers shall meet the standard pack requirements as set forth in the Washington Standards for Peaches

(Order No. 1212), or the U.S. Standards for Peaches (7 CFR 2851.1210 *et seq.*).

(5) Notwithstanding any other provisions of this section, any individual shipment of peaches sold by the producer or at an established packinghouse which meets each of the following requirements may be handled without regard to the provisions of this paragraph, of § 921.41 (Assessments), and of § 921.55 (Inspection and Certification) if:

(i) The shipment consists of peaches sold for home use and not for resale; and

(ii) The shipment does not, in the aggregate, exceed 500 pounds, net weight, of peaches.

(b) The terms "Washington Extra Fancy Grade," and "Washington Fancy Grade," shall have the same meaning as when used in the Washington Standards for Peaches (effective October 18, 1971), issued by the State of Washington Department of Agriculture; the term "loose or jumble pack" shall mean that the peaches are not placed in the container in rows, cups, compartments, or otherwise are not placed in the containers in symmetrical order; the term "standard peach box" shall mean a container with inside dimensions of 4 1/4 to 6 by 11 1/2 by 16 inches; the term "western lug box" shall mean any container with inside dimensions of 7 by 11 1/2 by 18 inches; the term "well filled" shall mean the level of fruit is filled at least to the top edge of the container; the term "diameter" shall mean the greatest distance measured through the center of the peach at right angles to a line running from the stem to the blossom end; and all other terms shall have the same meaning as when used in the marketing agreement and order.

Dated: June 19, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-19011; Filed 6-23-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 924

Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, Ore.; Proposed Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed regulation which would establish minimum grade and size requirements on shipments of fresh Washington-Oregon prunes during the period August 1, 1980, through July

31, 1981. These requirements are designed to provide for orderly marketing in the interest of producers and consumers.

DATES: Comments must be received not later than July 21, 1980.

ADDRESSES: Send two copies of comments to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975. The Draft Impact Analysis describing options considered in developing this proposed rule and the impact of each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and classified not significant. The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act. The proposed regulation would be issued under the marketing agreement and Order No. 924 (7 CFR Part 924) regulating handling of fresh prunes grown in Washington and in Umatilla County, Oregon, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposed regulation was recommended by the Washington-Oregon Fresh Prune Marketing Committee.

The recommendation of the committee reflects its appraisal of the crop and current and prospective market conditions. The committee expects fresh shipments of Washington-Oregon prunes in 1980 to total 18,000 tons, compared with 16,247 tons last season. The proposed regulation is designed to prevent the handling of prunes of a lower quality or smaller size than specified and to provide ample supplies of good quality fruit in the interest of producers and consumers.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

Such proposal reads as follows:

§ 924.318 Prune Regulation 18.

(a) During the period August 1, 1980, through July 31, 1981, no handler shall

handle any lot of prunes, except prunes of the Brooks variety, unless:

(1) Such prunes grade at least U.S. No. 1, except that only two-thirds of the surface of the prune is required to be purplish in color, and such prunes measure not less than 1 1/4 inches in diameter as measured by a rigid ring: *Provided*, That the following tolerances, by count, of the prunes in any lot shall apply in lieu of the tolerance for defects provided in the United States Standards for Grades of Fresh Plums and Prunes: A total of not more than 15 percent for defects, including therein not more than the following percentage for the defect listed:

(i) 10 percent for prunes which fail to meet the color requirement;

(ii) 10 percent for prunes which fail to meet the minimum diameter requirement;

(iii) 10 percent for prunes which fail to meet the remaining requirements of the grade: *Provided*, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including in the latter amount not more than 1 percent for decay, or

(2) Such prunes are handled in accordance with paragraph (b) of this section.

(b) Notwithstanding any other provision of this regulation, any individual shipment which, in the aggregate, does not exceed 500 pounds net weight, of prunes of the Stanley or Merton varieties of prunes, or 350 pounds net weight, of prunes of any variety other than Stanley or Merton varieties of prunes, which meets each of the following requirements may be handled without regard to the provisions of paragraph (a) of this section, and of §§ 924.41 and 924.55:

(1) The shipment consists of prunes sold for home use and not for resale, and

(2) Each container is stamped or marked with the handler's name and address and with the words "not for resale" in letters at least one-half inch in height.

(c) The term "U.S. No. 1" shall have the same meaning as when used in the United States Standards for Grades of Fresh Plums and Prunes (7 CFR 2851.1520-2851.1538); the term "purplish color" shall have the same meaning as when used in the Washington State Department of Agriculture Standards for Italian Prunes (April 29, 1978), and in the Oregon State Department of Agriculture Standards for Italian Prunes (October 5, 1977); the term "diameter" means the greatest dimension measured at right angles to a line from the stem to blossom end of the fruit; and, except as otherwise specified, all other terms shall have the same meaning as when used in

the marketing agreement and order.

(d) Prune Regulation 17 (44 FR 44145) is hereby terminated August 1, 1980.

Dated: June 19, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-19012 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 982

[Docket No. F&V AO 205-A5]

Filberts Grown in Oregon and Washington; Hearing on Proposed Amendment of the Marketing Agreement, as Amended, and Order, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed amendment and text of proposal.

SUMMARY: The hearing is being held to consider proposed changes in the filbert marketing agreement and order. The principle issues to be considered are a new method for setting marketing policy, and a change in the dates of the marketing policy and fiscal years. Also to be considered are a number of proposed changes of a minor nature. The texts of the proposals to be considered at the hearing are set forth below.

DATE: The hearing will begin on July 9, 1980, at 9:00 a.m.

ADDRESS: The hearing will be held in Room 1578, 1220 S.W. Third Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., 20250 (202) 447-5053. The Draft Impact Analysis describing the options considered in developing this notice of hearing and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendment, hereinafter set forth, and any appropriate modifications thereof, of the marketing agreement, as amended, and Order No. 982, as amended, regulating the handling of

filberts grown in Oregon and Washington.

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

This proposed action has been reviewed under the USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified significant.

Proposed by the Filbert Control Board

Proposal No. 1

Section 982.17 is revised to read as follows:

§ 982.17 Fiscal year and marketing policy year.

(a) "Fiscal year" means the 12 months from May 1 to the following April 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary.

(b) "Marketing policy year" means the 12 months from May 1 to the following April 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary.

Proposal No. 2

Section 982.18 is revised to read as follows:

§ 982.18 Board.

"Board" means the Filbert/Hazelnut Marketing Board established pursuant to § 982.30.

Proposal No. 3

Section 982.19 is renumbered § 982.20 and a new § 982.19 is added to read as follows:

§ 982.19 Disappearance.

"Disappearance" means the difference between orchard-run production and the available supply of merchantable filberts and merchantable equivalent of shelled filberts.

§ 982.20 [Renumbered from § 982.19]

Proposal No. 4

Section 982.30(g) is revised to read as follows:

§ 982.30 Establishment and membership.

* * * * *

(g) One public member who is neither a grower nor a handler.

Proposal No. 5

Section 982.32(e) and (f) are revised to read as follows:

§ 982.32 Nominations.

* * * * *

(e) All votes cast by cooperative handlers, independent handlers or cooperative growers, shall be weighted

according to the tonnage of certified merchantable filberts and, when shelled filbert grade and size regulation are in effect, the inshell equivalent of certified shelled filberts (computed to the nearest whole ton) recorded by the Board as handled by each such handler or cooperative grower during the preceding fiscal year and if less than one ton is recorded for any such handler or cooperative grower group, the vote shall be weighted as one vote. All votes cast by independent growers shall be given equal weight. Nominations received in the foregoing manner by the Board shall be reported to the Secretary at least 60 days prior to the beginning of each fiscal year, together with a certificate of all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If such nominations of any group are not submitted to the Secretary by that deadline, the Secretary may select the representatives of that group without nomination.

(f) Nominees for the member and alternate member positions specified in § 982.30(g) shall be chosen by the other eight members who are to serve on the Board during the ensuing fiscal year. If nominations for such member or alternate are not submitted within 30 days after the beginning of the fiscal year, the Secretary may select such member or alternate without nomination.

Proposal No. 6

Section 982.33(b)(1) is revised to read as follows:

§ 982.33 Selection and term of office.

(b) *Term of office.* (1) The term of office of each member and alternate member shall be two fiscal years from the beginning of the fiscal year, except that (i) the terms of office of one of the grower members and the member's alternate specified in § 982.30(d), one of the grower members and the member's alternate specified in § 982.30(e), and the handler members and alternate members specified in § 982.30(a) and (b) shall expire at the end of the first even-numbered fiscal year following the year of selection, and the terms of office of all other members and alternate members shall expire at the end of the first odd-numbered fiscal year following the year of selection; (ii) if the representation on the Board in an ensuing fiscal year will, by reason of change in representation pursuant to § 982.30(c) and (f), be different from that in the current fiscal year, the terms of office of all grower and handler members and alternate

members holding office in the current fiscal year shall expire at the end of the current fiscal year and successor members and alternate members shall be nominated and selected in conformance with §§ 982.30 and 982.33; (iii) if the district for independent grower representation in an ensuing fiscal year will be different from that in the current fiscal year, the terms of office of all independent grower members and alternate members specified in § 982.30(e) and (f) shall expire at the end of the current fiscal year and persons nominated to succeed them shall be nominated and selected so as to conform with such changed representation.

Proposal No. 7

Section 982.34 is revised to read as follows:

§ 982.34 Qualification.

(a) Any person selected to serve as a member or an alternate of the Board shall qualify by filing with the Secretary a written acceptance of appointment. Any member or alternate member who at the time of selection was a member or employed by a member of the group which nominated that person shall, upon ceasing to be such a member or employee, become disqualified to serve further and that position on the Board shall be deemed vacant. In the event any member or alternate member of the Board qualified and selected, in accordance with the provisions of §§ 982.30 and 982.32, to represent independent growers should, during that person's term of office, handle filberts produced by other growers, or become an employee of a handler, that position on the Board shall thereupon be deemed to be vacant.

(b) Any person nominated to serve as a public member or alternate shall not have a direct financial interest in any filbert growing or handling operation.

Proposal No. 8

Section 982.39(f) is revised to read as follows:

§ 982.39 Duties.

(f) To cause the books of the Board to be audited by one or more accountants, approved by the Board, at least once for each fiscal year and at such other times as the Board deems necessary or as the Secretary may request, and to file with the Secretary reports of all audits made;

Proposal No. 9

Section 982.40 is revised to read as follows:

§ 982.40 Marketing policy and volume regulation.

(a) *General.* For each marketing policy year, the Board may hold meetings for the purpose of computing its marketing policy for that year, and shall do so for the purpose of submitting any recommendations on its policy to the Secretary. The Board may designate one of its employees to compute and announce the free and restricted percentages.

(b) *Trade demand.* Prior to August of a marketing policy year, the Board shall recommend establishment of an inshell trade demand for that year to the Secretary. That inshell trade demand shall be equal to the average of the trade acquisition of inshell filberts during the preceding three years. If the trade acquisition during any one or all of those years was abnormally low, the Board may use a prior year or years to determine the three-year average. If the Secretary finds, on the basis of the Board's recommendation or other information, that limiting the quantity of merchantable filberts which may be handled during a marketing policy year through application of the free and restricted percentages to that trade demand, as provided in paragraph (c) of this section, would tend to effectuate the declared policy of the act, the Secretary shall establish that trade demand.

(c) *Inshell allocation—(1) Preliminary computed percentages.* Prior to September 20 of that marketing policy year, the Board shall compute and announce preliminary computed free and restricted percentages for that year to release 70 percent of the inshell trade demand computed for that year. The preliminary computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 70 percent and dividing by the most recent official estimate of orchard-run production less the average disappearance during the preceding three years, plus the undeclared carryin. The difference between 100 percent and the preliminary free percentage shall be the preliminary computed restricted percentage.

(2) *Final computed percentages.* The Board upon determining that a firm field price has been established for filberts for that marketing policy year, shall compute and announce final computed free and restricted percentages for that year to release 80 percent of the inshell trade demand computed for that year. The final computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 80 percent and dividing by the most recent official estimate of orchard-run production less the average disappearance during the preceding

three years plus the undeclared carryin. The difference between 100 percent and the final computed free percentage shall be the final computed restricted percentage.

(3) *Final percentages.* On or before November 15 the Board shall meet to recommend to the Secretary the final free and restricted percentages to release 100 percent, or up to 110 percent if market conditions justify, of the inshell trade demand previously established by the Secretary for the marketing policy year. The recommendation shall include the following:

(i) The estimated tonnage of merchantable filberts expected to be produced during the marketing policy year.

(ii) The estimated tonnage of inshell filberts held by handlers on the first day of the marketing policy year which may be available for handling as inshell filberts thereafter.

(iii) Any other pertinent factors bearing on the marketing of filberts during the marketing policy year.

Whenever the Secretary concurs with the recommendation of the Board, the Secretary shall establish the final free and restricted percentages.

(d) *Grade and size regulations.* Prior to September 20, the Board may consider grade and size regulations in effect and may recommend modifications thereof.

(e) *Revision of marketing policy.* At any time prior to February 15 of the marketing policy year, the Board may recommend to the Secretary revisions in the marketing policy for that year: *Provided*, That in no event shall any revision result in free and restricted percentages which would release more than 110 percent of the inshell trade demand computed for the marketing policy year. At any time during the period December 1 through February 10, at the request of two or more handlers who during the preceding marketing policy year handled at least 10 percent of all filberts handled, the Board shall meet to determine whether the marketing policy should be revised.

Proposal No. 10

Section 982.41 is revised to read as follows:

§ 982.41 Free and restricted percentages.

The free and restricted percentages computed by the Board or established by the Secretary pursuant to § 982.40, shall apply to all merchantable filberts handled during the current marketing policy year. Until the preliminary or final computed free and restricted percentages are computed by the Board for the current marketing policy year, the percentages in effect at the end of the previous year shall be applicable.

Proposal No. 11

Section 982.54 is revised to read as follows:

§ 982.54 Deferment of restricted obligation.

(a) *Bonding.* Compliance by any handler with the requirements of § 982.50 as to the time when restricted filberts shall be withheld shall be temporarily deferred to any date desired by the handler, but not later than 60 days prior to the end of the marketing policy year, upon the voluntary execution and delivery by such handler to the Board, before handling any merchantable filberts of such marketing policy year, of a written undertaking, secured by a bond or bonds with a surety or sureties acceptable to the Board, that on or prior to such date the handler will have fully satisfied the restricted obligation required by § 982.50.

Proposal No. 12

Section 982.62 is revised to read as follows:

§ 982.62 Accounting.

(a) *Operating reserve.* The Board, with the approval of the Secretary, may establish and maintain an operating monetary reserve in an amount not to exceed approximately one fiscal year's operational expenses or such lower limits as the Board, with the approval of the Secretary, may establish.

(b) *Refunds.* At the end of a fiscal year, funds in excess of the fiscal year's expenses and reserve requirements shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments the handler paid in excess of the handler's pro rata share of expenses of the Board. However, excess funds may be maintained and used by the Board until December 1 following the end of any such fiscal year: *Provided*, That the Board shall refund to each handler upon request, or credit to that handler's account with the Board, the handler's share of such excess prior to January 1.

Proposal No. 13

Section 982.65 is revised to read as follows:

§ 982.65 Carryover reports.

As of January 1, May 1, and August 1, or such other dates as the Board may recommend and the Secretary approve, each handler shall report within 10 days to the Board the handler's inventory of inshell and shelled filberts. Such reports shall be certified to the Board and the Secretary as to their accuracy and completeness and shall show, among other items, the following: (a) Certified

merchantable filberts on which the restricted obligation has been met; (b) merchantable filberts on which the restricted obligation has not been met; (c) the merchantable equivalent of any filberts intended for handling as inshell filberts; and (d) restricted filberts withheld.

Proposed by the U.S. Department of Agriculture

Proposal No. 14

Make such changes as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice may be obtained from the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, or may be inspected there.

Signed at Washington, D.C., on June 18, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-19047 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 221, 250, 255, and 298

[EDR-396A; Docket No. 38021; Dated: June 18, 1980]

Prescribed Airline Counter and Ticket Notices

AGENCY: Civil Aeronautics Board.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period in the CAB's rulemaking proceeding to revise and simplify its regulations for airline ticket and ticket counter notices to passengers. The extension was requested by the International Air Transport Association. **DATES:** Comments by: August 15, 1980. Reply Comments by: September 1, 1980.

Comments and relevant information received after these dates will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 38021, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Bureau of Consumer Protection, Civil Aeronautics Board, Washington, D.C. 20428; (202) 673-5158.

SUPPLEMENTAL INFORMATION:

By Notice of Proposed Rulemaking EDR-396 (45 FR 25817, April 16, 1980), the Board proposed to revise and simplify its required airline notices to

passengers on tickets and at ticket counters. The proposal makes the prescribed notices as short and simple as possible, while still containing the needed information. The proposal combines the various counter signs now required into one consolidated sign designated to emphasize the most important information. Ticket notices would also be simplified.

On June 12, 1980, The International Air Transport Association (IATA) asked for an extension of the comment period for 120 days. IATA argued that because its members are world-wide, this additional time is needed for coordination and discussion by the foreign air carriers and their governments. It included a proposed schedule for consultation and comment with the request, proposing to submit comments by October 16.

There have been not previous extensions requested in this proceeding, and no specific target date has been set for Board action. Because of the importance to passengers of these notices, however, the Board would like to take final action on the proposal as soon as practicable. On the other hand, the Board would also like to have as many and as thorough comments as possible. An initial comment period of 120 days from issuance of the proposed appears ample to assemble well-considered comments from all interested persons.

Accordingly, I find good cause to extend the time for preparation of initial comments for 60 days. The time for the filing of reply comments is being extended accordingly.

Under authority delegated by the Board in 14 CFR 285.20(d), the time for filing initial comments is extended to August 15, 1980, and the time for filing reply comments is extended to September 1, 1980.

(Secs. 204(a), 411 Federal Aviation Act of 1958, as amended, 72 Stat. 743, 769; (49 U.S.C. 1324, 1381))

By the Civil Aeronautics Board,

Richard B. Dyson,

Association General Counsel Rules & Legislation.

[FR Doc. 80-19040 Filed 6-23-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Parts 222 and 385

[EDR-403; ODR-22; Docket No. 38329; Dated: June 17, 1980]

Proposed Rule to Liberalize Regulation of Intermodal Services of Air Carriers and Foreign Air Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to eliminate Board restrictions upon intermodal cargo services, i.e., surface cargo transportation in connection with air transportation, except in those cases where the intermodal cargo services of foreign air carriers must be restricted for international civil aviation policy reasons. Foreign air carriers would be required to apply for statements of authorization to conduct intermodal services, and approval of those applications would depend on whether a foreign carrier's government had granted U.S. carriers reciprocal rights or on broader international aviation policy considerations. The Board would also discontinue its requirement that carriers file separate tariffs for pick-up and delivery services.

DATES: Comments by: August 22, 1980. Reply comments by: September 22, 1980.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: July 3, 1980. The Board's Docket Section prepares the Service List and sends it to persons listed, who then are required to serve their comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 38329, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION, CONTACT: Joseph Di Bella, Bureau of International Aviation, Legal Division, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5035.

SUPPLEMENTARY INFORMATION:

Intermodal Services of Foreign Air Carriers

The purpose of this rulemaking is to eliminate restrictions that have been imposed by the Board upon air carriers and foreign air carriers performing intermodal cargo services, i.e., surface cargo transportation in connection with air transportation, except for those restrictions that must be maintained for reasons of international civil aviation policy. Specifically, the Board has tentatively decided to repeal the rules established in the *Substitute Service Case*, Order 75-3-37, March 12, 1975; to dismiss the show cause proceeding instituted in Order 76-11-9, November 3, 1976, wherein the Board proposed to

extend the rules of the *Substitute Service Case* to the domestic portions of international cargo movements; to approve the airwaybill notice proposed by the International Air Transport Association (IATA) as it relates to the substitution of other means of transportation for air transportation on international cargo movements; to disapprove IATA Resolution 507(b), which would permit unrestricted trucking services by air carriers and foreign air carriers to interior points in the United States that are 700 miles beyond U.S. gateways on South Pacific-U.S. routes; to eliminate the requirement that carriers file separate pick-up and delivery tariffs under Part 222 of the Board's Regulations; and to amend Part 222 to allow denial of intermodal service rights to foreign air carriers that are citizens of countries that restrict the operations of U.S. carriers. The amended Part 222 would require foreign air carriers to obtain Statements of Authorization to conduct intermodal cargo services beyond the pick-up and delivery zone. Board denial of a Statement of Authorization would be subject to stay or disapproval by the President within 10 days, or as otherwise provided in the Board's order.

The Board's existing restrictions on intermodal cargo service reflect an era when the Board relied upon its own regulatory intervention instead of the competitive marketplace to determine the extent and quality of air services. In the *Substitute Service Case*, Docket 19797, the Board decided that air carriers could substitute surface transportation (primarily trucking service) for air cargo transportation between points in their certificates only in limited circumstances. Regular substitute service from origin to destination was prohibited except in emergencies. Substitute service with a prior or subsequent air movement was allowed for over-sized cargo, restricted articles, unforeseen backlog, or where the carrier also provided some service by aircraft between the points where substitute service was used.¹ In addition, the Board prescribed a notice to be printed on all airwaybills to advise shippers that substitute service might be utilized. These restrictions were imposed to protect shippers from the possibility of deceptive practices, inferior service, or higher costs.

With passage of Pub. L. 95-163, which deregulated the domestic all-cargo industry, the Board now relies more upon competition to regulate intermodal services. Subsequent to enactment of Pub. L. 95-163, the Board exempted air

¹ Order 75-3-37, March 12, 1975, at 3.

carriers from the requirement to file domestic cargo tariffs for both all-cargo and combination services, since, for one reason, Congress had eliminated the Board's power to prescribe cargo rates and rules.² It would be incongruous for the Board to exert greater control over air/surface cargo transportation than it does over all-air transportation, and therefore we have tentatively decided to repeal the *Substitute Service Case* rules.

In November 1976, the Board issued an Order to Show Cause why the rules of the *Substitute Service Case* should not be applied to domestic sectors of international air freight movements, citing the same consumer protection issues that prompted the original rule.³ Pending finalization of that show cause order, the Board has been rejecting airwaybill notice provisions for intermodal services submitted by IATA that do not conform to the notice format prescribed in the *Substitute Service Case*.⁴ Both of these actions would obviously lose their foundations if the *Substitute Service Case* rules were repealed. We have therefore tentatively decided to terminate the investigation initiated in the show cause order, and to approve the IATA airwaybill notice.⁵

Last year IATA proposed a Resolution 507(b) "use of surface transportation" to govern trucking services by air carriers and foreign air carriers over South Pacific-U.S. routes.⁶ The rule would permit use of surface transportation, at through air rates, in route segments within the United States where insufficient air cargo capacity was available, undue delay would result, or inclement weather grounded aircraft. In addition, unrestricted trucking would be permitted within 700 miles of a U.S. gateway (currently, unrestricted trucking is permitted only within the 35-mile pick-up and delivery zone around each gateway).

For the following reasons, we have tentatively decided not to approve Resolution 507(b), and to adopt rules that would allow review of requests by foreign carriers to conduct intermodal

services within the United States on a case-by-case basis.⁷

The order to show cause to extend the *Substitute Service* rules to international routings was issued in response to a petition of five domestic airlines that were concerned about the use of trucking services by international air carriers and foreign air carriers to transport cargo beyond points in their certificates or permits. Although the *Substitute Service Case* rules only applied between points that an air carrier was authorized to serve by its certificate, the responses to the show cause order indicated a widespread belief that those rules would constitute a blanket prohibition on off-route trucking. Indeed, the Board indicated in one order that trucking by an air carrier or foreign air carrier to points not contained in its certificate or permit was unlawful, citing the *Substitute Service Case*.⁸

As far as the consumer interest is concerned, we see nothing wrong with allowing carriers complete freedom to utilize whatever combination of air and motor carrier services best meets the needs of the shippers, provided that appropriate authority, if any, is obtained from the ICC for the surface movements. Shippers are generally well-informed, and in a free marketplace are capable of selecting the type of transportation that will provide the optimum service at the lowest price. Thus, the most efficient intermodal system will be attained if the Board does not impose regulatory restraints on the carriers' flexibility to tailor air/truck services to meet demand.

While economic considerations suggest that the Board should not restrict intermodal services, the responses to the show cause order and the Board's experience in international negotiations indicate that there are international civil aviation policy reasons to retain control over intermodal services of foreign air carriers. In the past, the governments of some foreign countries, such as Italy and Germany, have inhibited the ability of U.S. carriers to provide ground transportation beyond their air terminals, thereby denying them a free and equal opportunity to compete.⁹ It is the international aviation policy of the United States to minimize governmental

interference in the marketing of air transportation. However, since all foreign governments do not share our views, it is necessary occasionally to impose restrictions in order to achieve full and fair opportunities for our carriers. We therefore have tentatively decided to reserve the ability to grant or deny intermodal operating rights to foreign air carriers because that may be the only way to eliminate such restrictions in the long run.

As a means of controlling intermodal services by foreign air carriers, the Board has tentatively decided to adopt an amendment to Part 222 that would require foreign air carriers to register with the Board prior to conducting such services. Registration would consist of filing the attached proposed form, to which objections could be filed within 28 days. The proposed form would require disclosure of the type and extent of intermodal services that the carrier expects to operate to help the Board evaluate the economic value of the operating rights requested. We expect that most applications would be approved routinely, and we propose to delegate authority to the Director, Bureau of International Aviation, to approve an application, to approve it with conditions, or to request additional information. Approval or other disposition would consist of returning a stamped copy of the application to the foreign air carrier. Board denial or cancellation of a Statement of Authorization would be subject to stay or disapproval by the President within 10 days or within any longer time period established by the Board. Such review is not required by the Act, as all foreign air carrier permits are expressly subject to any rules or regulations adopted by the Board, and Board action pursuant to amended regulations would not require Presidential approval. However, limitations on a foreign air carrier's ability to provide intermodal services could affect the international relations of the United States, an area in which the President has primary responsibility.

The decision to approve or disapprove an application will depend on the extent to which a foreign carrier's home government has extended economic opportunities of similar value to U.S. air carriers. The Board will consider the nature and extent of trucking rights enjoyed by U.S. carriers, including their ability to conduct trans-border trucking operations, and the extent of any marketing or operational restrictions that have been placed upon ground handling or transportation of cargo by U.S. carriers. Our elevation will take into account the full range of

² ER-1080, 43 FR 53628, November 8, 1978. Later, indirect air carriers and foreign indirect air carriers of property were exempted from the requirement to file cargo tariffs for both domestic and international service. ER-1094, 44 FR 6634, January 24, 1979; ER-1159, 44 FR 69633, November 28, 1979.

³ Order 76-11-9, November 3, 1976.

⁴ See Orders 78-8-10, August 3, 1978; 78-11-146, November 30, 1978; 79-6-47, June 5, 1979. These rejections have been stayed pending submission of revised notice language.

⁵ We will consolidate the show cause investigation. Docket 29525, with this rulemaking.

⁶ Action on this resolution was deferred in Order 79-1-40, January 4, 1979, to allow the Board to consider it in conjunction with disposition of the show cause order on substitute services.

⁷ The investigation into IATA Resolution 507(b), Docket 30332, will also be consolidated with this rulemaking.

⁸ See Order 76-1-17, January 5, 1976, at 2 n.2; see also *The Flying Tiger Line, Inc. v. SAS, Enforcement Proceeding*, Docket 30662.

⁹ In the case of Germany, the bilateral air transport agreement was later amended to allow carriers of both countries to conduct unrestricted trucking services—including transborder operations—in connection with air transportation.

competitive opportunities with the country in question. For example, the Board would have to consider carefully the liberal grant of trucking opportunities in exchange for foreign trucking rights that are of minimal economic value, where a foreign country imposes substantial restrictions in other areas. Of course, where a bilateral agreement specifically provides for trucking rights, the Board will approve any application that conforms to the terms of the agreement.

We proposed to delay the effectiveness of this new rule for 180 days, to allow consultation with foreign governments and to avoid unnecessary disruptions of the foreign air carriers' existing intermodal services.

Under the proposed Part 222, a foreign air carrier would need a Statement of Authorization for intermodal services where it had control over the movement of freight from origin to destination, either under its own tariff or under a joint rate with a wholly-owned or effectively-controlled subsidiary. This requirement would be imposed as an exercise of the Board's authority to place conditions on foreign air carrier permits, as the public interest may require,¹⁰ and to control the nature of traffic that may be carried by a foreign air carrier.¹¹ The Board has tentatively decided not to require approval for intermodal services that are performed under a joint rate with an ICC-licensed motor carrier (not a subsidiary of the foreign air carrier), where the foreign air carrier has responsibility only for the air portion of the journey. Similarly, a foreign air carrier would not need permission from the Board to conduct trucking services under a license issued by the ICC, so long as those services were not connected with the carrier's air service. In both of these situations, the surface transportation would be sufficiently divorced from the air services of the foreign air carrier to be outside of the Board's concern.

Pick-up and Delivery Tariffs

As part of the amendment to Part 222, we have tentatively decided to eliminate the requirement that air carriers and foreign air carriers file pick-up and delivery tariffs. Since air carriers were exempted from the requirement to file domestic cargo tariffs, the number of pick-up and delivery service tariff filings has become insignificant.

The purpose of establishing a pick-up and delivery zone was to define the area

not subject to ICC jurisdiction as being "incidental to transportation by aircraft."¹² The ICC has primary jurisdiction to define this exemption, and we believe that the extent of pick-up and delivery tariff filings is not sufficient to justify continued duplication of the ICC function. Therefore, we have tentatively decided to retain the pick-up and delivery zone only to determine the area within which a foreign air carrier may provide surface transportation without a Statement of Authorization. For these purposes, we will retain the 35-mile zone used by the ICC. Operations within 35 miles of a point contained in a permit may justifiably be considered as a concomitant of the authority to serve the point by air, and we foresee no foreign policy reasons why the United States would need to withhold this authority if air operations were permissible. Air carriers and foreign air carriers would still be required to include a description of all services provided in connection with air transportation in their international air cargo tariffs under 14 CFR 221.53, but the Board would no longer determine which services were beyond ICC jurisdiction.

Proposed Rules

Accordingly, the Board proposes to amend 14 CFR Chapter II to read as follows:

1. 14 CFR Part 222, *Air Cargo Pick-up and Delivery Zones, Filing of Tariffs; Application for Authority to File*, would be retitled and reissued to read:

PART 222—INTERMODAL SERVICES BY FOREIGN AIR CARRIERS

Sec.

- 222.1 Applicability.
- 222.2 Limitation on carriage by foreign air carriers of property.
- 222.3 Application for Statements of Authorization.
- 222.4 Procedure on receipt of application for Statement of Authorization.
- 222.5 Cancellation or conditioning of a Statement of Authorization.

Authority.—Sec. 204, 402, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 757, as amended by 92 Stat. 1724; (49 U.S.C. 1324, 1372).

§ 222.1 Applicability.

This part is applicable to the provision of intermodal cargo services, i.e., surface transportation of property in connection with air transportation, by foreign direct air carriers at any point within the United States or its territories and possessions.

§ 222.2 Limitation on carriage by foreign air carriers of property having a prior or subsequent movement by surface transportation.

(a) A foreign air carrier shall not transport by aircraft property that has a prior or subsequent movement by surface transportation (except for pick-up and delivery services within 35 miles of the airport or of the city limits of a permit point) unless specific authorization to conduct such services in the form of a Statement of Authorization has been granted by the Board.

(b) Statements of Authorization shall not be required for transportation of property by aircraft that has a prior or subsequent movement by surface transportation under a joint rate with a common carrier licensed by the Interstate Commerce Commission, if the foreign air carrier has no responsibility or control over the surface movement and does not hold itself out to the public as having such responsibility or control.

§ 222.3 Application for Statements of Authorization.

(a) Application for a Statement of Authorization shall consist of filing with the Board's Regulatory Affairs Division, Bureau of International Aviation, two copies of completed Form XXX (obtainable from the Civil Aeronautics Board, Publications Services Division, Washington, D.C. 20428). In most cases the Board will act upon applications for Statements of Authorization within 60 days.

(b) Persons objecting to an application for a Statement of Authorization shall file their objections with the Regulatory Affairs Division, Bureau of International Aviation, within 28 days of the filing date of the application. The Board will list the names and nationality of all persons applying for registration in its Weekly Summary of Filings.

§ 222.4 Procedure on receipt of application for Statement of Authorization.

(a) After review of an application form filed under § 222.3, the Board will take one or more of the following actions:

(1) Indicate by stamp on CAB Form XXX the effective date of the Statement of Authorization, and return to the carrier the duplicate copy of Form XXX as evidence of approval under this part;

(2) Request additional information from the applicant;

(3) Set the application for notice and hearing procedures; or

(4) Disapprove the application or approve it subject to such terms, conditions, or limitations as may be required by the public interest.

¹⁰ See section 402(e) of the Act; 16 CAB 371, 378, August 28, 1952.

¹¹ See, e.g., 43 CAB 301, September 22, 1965; 45 CAB 709, October 24, 1968.

¹² 49 U.S.C. 10526(a)(8).

(b) An order disapproving an application shall be submitted to the President for stay or disapproval within 10 days after adoption or within any longer time period established by the Board.

§ 222.5 Cancellation or conditioning of a Statement of Authorization.

A Statement of Authorization may be canceled or subjected to additional terms, conditions, or limitations, at any time, with or without hearing, if the Board finds that it is in the public interest to do so. An order canceling or conditioning a Statement of Authorization shall be submitted to the President for stay or disapproval within 10 days after adoption or within any longer time period established by the Board.

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

2. 14 CFR Part 385, *Delegations and Review of Action Under Delegation; Nonhearing Matters* would be amended by adding a new paragraph (w) to § 385.26 to read:

§ 385.26 Delegation to the director, Bureau of International Aviation.

The Board delegates to the Director, Bureau of International Aviation, authority to:

* * * * *

(w) Approve applications for Statements of Authorization to conduct intermodal services under Part 222 of this chapter (Economic Regulations), or to require that an applicant under Part 222 submit additional information.

By the Civil Aeronautics Board,
Phyllis T. Kaylor,
Secretary.

BILLING CODE 6320-01-M

CAB Form XXX UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD FOREIGN AIR CARRIER APPLICATION FOR AUTHORIZATION FOR INTERMODAL SERVICES	DO NOT WRITE - FOR OFFICIAL USE ONLY
TO: CIVIL AERONAUTICS BOARD ATTENTION: Regulatory Affairs Division Bureau of International Aviation Washington, D.C. 20428	
Application is made for a Statement of Authorization to conduct intermodal services under provisions of applicants' foreign air carrier permit and Economic Regulation Part 222. ☐ Initial Application ☐ Application for Removal of conditions	
1. Name of Applicant: Nationality:	3. Method for providing surface transportation: ☐ company-owned trucks ☐ ICC-licensed motor carrier ☐ ICC-licensed surface forwarder ☐ other (explain) _____ _____ _____
2. Send Authorization to: (Name and Address)	
5.(a) estimated annual tonnage of cargo to be shipped by surface transportation: _____ (b) percentage of total air cargo to be shipped by surface transportation beyond 35-mile pick-up and delivery zone.	4. Area in the United States to be served by surface transportation

- 2 -

CERTIFICATION

I certify that the information contained in this application, and in the attachments hereto, is complete and accurate to the best of my knowledge.

Signature: _____

Date: _____ Name (please type): _____

Place: _____ Title: _____
(See note)

NOTE: Application must be signed by a responsible officer, such as the President, Vice President, Secretary, or Treasurer of a corporation, or a partner or owner of other non-corporate applicants.

FOR CAB USE ONLY

Special conditions or limitations/reasons for disapproval.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 12, and 140

Procedures of the Complaints Section and Conforming Amendments to Reparation Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: Effective February 25, 1980, the Commodity Futures Trading Commission created a new and independent unit, the Complaints Section, to process and investigate reparation complaints, and delegated to the Director of the Complaints Section the authority to perform all of the functions reserved to the Commission in Sections 14(a), 14(b), and 14(d) of the Commodity Exchange Act, as amended, 7 U.S.C. 18.

The Commission now proposes to amend its rules governing the initial phase of its reparation system to expedite processing and resolution of reparation complaints. The Commission is also proposing to adopt CFTC Forms C-1, C-2 and C-3, to be used for the filing, answering and settling of reparation complaints, respectively.

DATE: Comments on the proposed rule should be submitted on or before August 25, 1980.

ADDRESS: Send Comments to: Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581, ATTN: Secretariat.

FOR FURTHER INFORMATION CONTACT: Margaret R. Sandridge, Director, Complaints Section, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581 (202) 254-3814.

SUPPLEMENTARY INFORMATION: Section 14 of the Commodity Exchange Act, 7 U.S.C. 18, provides that any person complaining of a violation of any provision of the Act or of any rule, regulation, or order thereunder by any person registered or required to be registered with the Commission may apply to the Commission for a reparation award, within two years after the cause of action accrues. Section 14 further provides that if a reparation complaint is filed, the Commission "shall investigate and may, if in its opinion the facts warrant such action, * * * afford such person an opportunity for a hearing thereon before an Administrative Law Judge * * *"

The Commission has delegated its authority to receive and investigate

reparation complaints to the Director of its Complaints Section. See 45 FR 14021 (March 4, 1980). During the past year, the Commission's staff has undertaken an extensive review of the present reparation program. That review led to the establishment of the Complaints Section in February 1980 and formed the basis for the rules hereby proposed.

The Commission has determined that the Complaints Section should play an affirmative role in examining claims, encouraging settlement, and investigating and reporting on each claim submitted to the Commission for a reparation award. The existing Reparation rules do not expressly require an affirmative approach, a situation which has caused unnecessary delay, has increased the number of hearings required to be conducted by the Commission's Administrative Law Judges, and has resulted in a large backlog of cases. The proposed amendments to the Reparation rules have been designed to remedy these problems.

The proposed rules detail the process to be followed by the Complaints Section in processing and investigating reparation claims. For the most part, the proposed rule changes are self-explanatory. Requirements for the submission of any complaints, and for responses to them, remain substantially the same,¹ except that it is proposed that complaint, answer and settlement forms will be required to be used.² The proposed forms require the submission of all information necessary to the efficient processing of the case by the Commission.

Under the proposed rules, the Director of the Complaints Section is authorized to screen, investigate, and report on incoming reparation claims and all responses to those claims, to clarify the contested facts and issues in each case and to encourage the parties to seek settlement. The Director is also authorized to prepare a report with respect to each reparation claim investigated, setting forth a summary of the complaint, answer, and any counterclaim, the facts admitted and in contention by the parties. The report is also to contain the findings of the Director as to whether a violation of the Commodity Exchange Act or a rule regulation, or order of the Commission

has been committed, and if so, the amount of damages suffered by the complainant as a result of that violation. Under the proposed rules, the right to a hearing, or a formal adjudicatory proceeding, before an Administrative Law Judge will be deemed waived unless one of the respondents requests a hearing within 45 days after issuance of the Director's report.

Set forth below is a synopsis of the more significant proposed changes in procedures:

1. Unless a complaint is rejected for one of the reasons enumerated in proposed rule 12.22, the Complaints Section will, after an investigation, prepare a report on the claim setting forth the issues in contention and its findings and conclusions as to whether or not a violation was committed and the amount of any damages incurred as a result of such a violation (proposed rule 12.32). Thus, under the new rules, the Complaints Section will, after first rejecting those claims which are untimely filed, the subject of pending arbitration or civil court action, or which otherwise cannot be considered in a reparation proceeding, and after exercising its discretion to "screen" complaints and determine proper respondents and to reject additional categories of claims, make a determination as to the merits of each reparation claim. That determination will be based on a thorough investigation of the claim.³ Proposed rule 12.24 provides for a preliminary investigation and proposed rule 12.29 provides for any further investigation by the Complaints Section and, as in existing rule 12.25, any additional investigation by the Commission which may prove necessary. Proposed rule 12.34 provides for further refinement of the issues, even after a proceeding is commenced, if requested by the Chief Administrative Law Judge and if the Director of the Complaints Section concurs.

2. Under proposed rule 12.25, if a respondent who is not registered with the Commission does not respond to a complaint naming that person as a violator, the Director of the Complaints Section may, if the complainant does not furnish a current address where that respondent may be served notice of the complaint, reject the complaint. Persons

¹ The time allowed for submission of a response would, however, be reduced from 45 days to 30 days unless extended by the Director of the Complaints Section (proposed rule 12.26).

² The proposed complaint, answer and settlement forms are appended. The format for the proposed form for satisfaction and settlement of complaints is presently set forth in Rule 12.23(a) and is unchanged in the proposal (proposed rule 12.26(a)).

³ Pursuant to proposed § 12.23(b), a \$50.00 processing fee will be paid shortly after filing a complaint. This represents an increase from the present fee of \$25.00. Further, the fee will be paid upon acceptance of the complaint for investigation and not, as now, just prior to the institution of a formal adjudicatory proceeding. This new fee would be set pursuant to the authority contained in Section 483a of the Independent Offices Appropriations Act of 1952, 31 U.S.C. 483a.

registered with the Commission, however, are under a continuing duty to furnish the Commission with a current address where they can be reached, and proposed rules 1.14a, 12.25 and 12.28 make clear that registrants and those who have been registrants within two years of the date the reparation claim arose will be in default if they do not respond to complaints sent to their address of record filed with the Commission.⁴

3. Proposed rule 12.32 provides that, at the conclusion of the Complaint Section's investigation, the Director's report will be forwarded to all parties together with a notice that any respondent who does not request a formal adjudicatory proceeding shall be deemed to have waived further proceedings and consented to an order of the Commission based on the Director's report. A formal adjudicatory proceeding must be requested within 45 days (proposed rule 12.33). Proposed rule 12.35 further provides that whenever a respondent does not request a hearing before an Administrative Law Judge a final order of the Commission is to be entered by the Secretary of the Commission based on the Director's determination as to the merits, which will be contained in the Director's report. (Section 140.14 will be amended to delegate that authority to the Secretary). This proposal is premised in part on the belief that the investigation of the Complaints Section will result, in many cases, not only in narrowing the issues, but in resolving them in a manner satisfactory to the parties.

4. Proposed rule 12.36 also provides that any party may file a petition for reconsideration from a determination by the Director which results in a final disposition of the case, and that such a petition may be denied only after review by the Commission. This rule is designed to provide an opportunity for review of the director's decision to reject a complaint, or to prepare an order based on a finding of default or waiver of a formal adjudicatory proceeding. A sixty day review period is provided.

5. If a hearing is requested by a respondent, that hearing will be conducted in accordance with the existing Reparation rules of the Commission with respect to hearings.

⁴The definition of "registrant" is expanded to conform to the provisions of Section 4m of the Act, 7 U.S.C. 6m, and rule 4.13, that those commodity trading advisors and commodity pool operators who are otherwise not required to register remain subject to reparation proceedings. See proposed amendment to rule 12.3(q). Of course, persons required to register under the Act who did not in fact do so remain subject to reparation proceedings.

That portion of the Director's report which sets forth the remaining issues in contention between the parties will be among the papers that are transmitted to the Hearing Clerk in any such case (proposed rule 12.33).

These proposed rules relate solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. However, since these amendments represent significant changes in the procedures governing the initial stage of the reparation system, the Commission invites public comment concerning them.

Accordingly, pursuant to the authority in Sections 2(a)(11), 8a and 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(j), 12a and 18, and Section 483a of the Independent Offices Appropriation Act of 1952, 31 U.S.C. 483a, the Commission proposes to amend Part 12, and rule 140.14, and to add a new rule 1.14a, of the Commission regulations as follows:

PART 12—RULES RELATING TO REPARATION PROCEEDINGS

§§ 12.2, 12.3, 12.5 12.6 12.7 12.9 12.10 and 12.11 [Amended]

1. Amend the specified sections of Subpart A of Part 12 as follows:

Section	Amendment
12.2.....	Strike out from the title "promulgated under the Commodity Futures Trading Commission Act."
12.3(f).....	Amend the paragraph to read as follows:
* * * * *	
	(f) "Complaint" means a document submitted to the Commission alleging a violation by a registrant and damages resulting therefrom.
* * * * *	
12.3(g).....	Amend the paragraph to read as follows:
* * * * *	
	(g) "Director of the Complaints Section" or "Director" means the person to whom the Commission has delegated, under rule 140.81 of this Chapter, certain functions of the Commission under Section 14 of the Act, 7 U.S.C. 18, and in Subpart B of this part.
12.3(h).....	Amend the paragraph to read as follows:
* * * * *	
	(h) "Hearing" or "formal adjudicatory proceeding" means that part of a proceeding which involves the submission of evidence either by oral presentation or written submission, but does not include any part of a proceeding conducted pursuant to Subpart B of this part.
12.3(i).....	Amend the paragraph to read as follows:
* * * * *	
	(i) "Order" means (1) the whole or any part of a final procedural or substantive disposition of a formal adjudicatory proceeding by the Commission or by a Presiding Officer, or (2) an order issued by the Commission pursuant to §§ 12.28, 12.31, 12.32, or 12.33.
12.3(m).....	Strike out the paragraph in its entirety.
12.3(p).....	Strike out the paragraph in its entirety.

Section	Amendment
12.3(q).....	Amend the paragraph to read as follows:
* * * * *	
	(q) "Registrant" means (1) any person who is registered or required to be registered under sections 4d, 4e, 4k or 4m of the Act, 7 U.S.C. 6d, 6e, 6k or 6m; or (2) any person who has been exempted from the registration requirements by a provision of the Act or Commission regulation but who remains subject to reparation awards pursuant to such provision or regulation.
	Redesignate "(n)," "(o)," "(q)," "(r)," "(s)," and "(t)," thereof as "(m)," "(n)," "(o)," "(p)," "(q)," and "(r)," thereof.
	Add the following new paragraph:
* * * * *	
	(s) "Violation" means a violation of any provision of the Act or of any rule, regulation, or order of the Commission issued under the Act.
12.5(c).....	Insert a new first sentence, as follows: "The Director, to expedite decision or to prevent undue hardship on a party, may waive any rule in Subpart B of this Part, when no party is prejudiced thereby."
12.5(c).....	Strike out "neither" and insert "no" in lieu thereof in the second sentence.
12.6.....	Insert "the Director," immediately after the word "Commission."
12.7.....	Insert "the Director," immediately after the word "Commission" in both places.
12.9(a)(1).....	Add the following at the end thereof, without paragraph indentation: "The Director and members of the Director's staff are not decisional employees within the meaning of this provision."
12.10(b).....	Add the following new sentence at the end thereof: "The preparation and dissemination of the Director's report, under §§ 12.32 and 12.33, shall not be considered participation or advice within the meaning of this provision."
12.11.....	Add a new paragraph (d), as follows:
* * * * *	
	(d) <i>No Attorney Necessary.</i> Upon inquiry, any interested person shall be advised by the Director that it is not necessary to have an attorney in order to submit or to defend a claim under this Part.
2. Amend Subpart B of Part 12 to read as follows:	
Subpart B—Initial Procedure With Respect to Reparation Complaints	
Sec.	
12.21	Complaint.
12.22	Review of Complaint; Notice of Complaint; Mandatory and Discretionary Reaction.
12.23	Notice of investigation; payment of processing fee.
12.24	Preliminary investigation.
12.25	Notification to respondent of complaint.
12.26	Response to complaint.
12.27	Reply to counterclaim.
12.28	Effect of failure to answer or reply; default.
12.29	Investigation of the case.
12.30	Settlement—Statements of Satisfaction and Discontinuance of Proceedings.
12.31	Admission of Liability for a Portion of the Damages Claimed.
12.32	Report; Waiver of formal adjudicatory proceeding if not timely requested.
12.33	Requests for a formal adjudicatory proceeding.
12.34	Requests for further investigation.
12.35	Order of the Commission pursuant to §§ 12.28, 12.31, 12.32 and 12.36.
12.36	Reconsideration.

Subpart B—Initial Procedure With Respect to Reparation Complaints

§ 12.21 Complaint.

Any person complaining of a violation by a registrant may, by filing a complaint in accordance with the provisions of this Section, at any time within two years after the cause of action accrues, apply to the Commission for a reparation award. The complaint may request the Commission to determine the amount of damages, if any, to which the complainant is entitled as a result of the violation and to issue an order directing the offender to pay that amount to the complainant.

(a) *Form of complaint.* A complaint submitted to the Commission pursuant to this Section shall be filed on CFTC Form C-1, copies of which may be obtained from the Director without charge. As stated on CFTC Form C-1, in completing the form a complainant shall completely and concisely describe in chronological order the facts that are claimed to constitute a violation. The facts must be set forth in a manner that will permit each fact to be admitted or denied, as the case may be, by the person or persons alleged to have committed the violations. CFTC Form C-1 shall require the complainant to set forth the following information:

- (1) The name, residence address and home and business phone numbers of the complainant;
- (2) The name, address and phone numbers, if known, of each person alleged in the complaint to have committed a violation;
- (3) If possible, the specific provisions of the Act, rule, regulation, or order claimed to have been violated;
- (4) All relevant facts concerning each and every act or omission which it is claimed constitute a violation, including the date and place of each alleged act or omission;
- (5) Facts showing the manner in which it is claimed the complainant was injured by the alleged violations;
- (6) The amount of damages the complainant claims to have suffered and the method by which those damages have been computed;
- (7) A description of any arbitration proceeding or civil court litigation, based on the same facts set forth and involving the same parties named in the complaint, which has been instituted or is presently pending, or a statement that no such proceeding has been instituted or is pending; and
- (8) A description of any efforts previously undertaken by complainant to settle or otherwise resolve the dispute that is the subject of the complaint.

(b) *Acknowledgement by complainant; Additional information.* CFTC Form C-1 shall contain a statement that by submitting a complaint to the Commission the complainant understands that:

- (1) Section 14 of the Act does not confer an absolute right to a formal adjudicatory proceeding or to a reparation award;
- (2) The complainant may, at the request of the Director, be called upon to furnish additional information and documents to the Director and submit to an investigation in connection with the complaint; and
- (3) The complaint may be rejected if the complainant does not cooperate with the Director's investigation of the complaint, fails to provide additional information and documents upon request of the Director, or causes unreasonable delay during the processing of the complaint.

(c) *Subscription and verification of the complaint; exhibits.* As set forth on CFTC Form C-1, each complaint shall be signed personally by an individual complainant or by a duly authorized officer or agent of a complainant who is not a natural person. The complainant's signature shall be given under the penalty of perjury attesting either that the complainant knows that the facts set forth in the complaint to be true and correct, or that the complainant believes the facts set forth to be true and correct, in which event the information upon which the complainant formed that belief shall also be set forth with particularity. One true copy of each and every document possessed by or available to the complainant which evidences facts set forth in the complaint shall be annexed to the complaint.

(d) *Time and place of filing of complaint.* A complaint shall be filed by mailing the original and a copy thereof and all attachments thereto, in proper form, to the Commission at its principal offices in Washington, D.C., addressed to the attention of the Complaints Section.

(e) *Bond required if complainant is non-resident.* If a complaint seeking reparations is filed by a non-resident of the United States, the complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States who qualifies as financially responsible for the entire amount of the bond. The bond shall be payable to the respondent named in the complaint and be conditioned upon the payment of (1)

costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail; and (2) any reparation award that may be issued by the Commission against the complainant on any counterclaim asserted by respondent. The furnishing of a bond may be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

§ 12.22 Review of Complaint; Notice to Complainant; Mandatory and Discretionary Rejection.

(a) *Notification of grounds for rejection of complaint.* If, after review of the complaint, there appear to be grounds to reject the complaint, in whole or in part, as set forth in paragraphs (b) or (c) of this section, the Director shall notify the complainant in writing of such grounds. Within 15 days or such longer period as the Director may permit, the complainant may supplement the complaint by submitting such additional information as the Director may specify in the notice or as the complainant deems relevant.

(b) *Mandatory rejection of complaint.* Upon review of a complaint and any supplemental information subsequently provided by the complainant in connection therewith, the Director shall reject the complaint, in whole or in part, to the extent it appears that:

- (1) The cause of action accrued more than two years prior to the date the complaint is filed with the Commission;
- (2) The complaint does not allege a violation as defined in § 12.3(s), or does not show that the complainant suffered any damages or the amount of damages claimed as a result of the alleged violation;
- (3) There is pending an arbitration or civil court proceeding involving the complainant and the same persons named as respondents in the complaint, which is based on the same facts set forth in the complaint, except that any such rejection shall be without prejudice to the refiling of a complaint within two years after such proceeding terminates if it terminates without a disposition on the merits; or
- (4) The complaint names persons as respondents who at the time the cause of action accrued were not registrants as defined in § 12.3(g).

(c) *Discretionary rejection of complaint.* Upon review of a complaint and any supplemental information subsequently provided by the complainant in connection therewith, the Director may reject the complaint to the extent it appears that:

- (1) The complaint names persons as respondents who at the time the cause of action accrued were not registrants as defined in § 12.3(g).
- (2) The complaint does not allege a violation as defined in § 12.3(s), or does not show that the complainant suffered any damages or the amount of damages claimed as a result of the alleged violation;
- (3) There is pending an arbitration or civil court proceeding involving the complainant and the same persons named as respondents in the complaint, which is based on the same facts set forth in the complaint, except that any such rejection shall be without prejudice to the refiling of a complaint within two years after such proceeding terminates if it terminates without a disposition on the merits; or
- (4) The complaint names persons as respondents who at the time the cause of action accrued were not registrants as defined in § 12.3(g).

(c) *Discretionary rejection of complaint.* Upon review of a complaint and any supplemental information subsequently provided by the complainant in connection therewith, the Director may reject the complaint to the extent it appears that:

(1) The complainant has failed to comply with any of the provisions of § 12.21;

(2) The complainant has failed to provide all of the information requested by the Director under § 12.22(a);

(3) There is pending an arbitration or civil court proceeding in which the complainant may seek appropriate relief, arising out of the same transaction or occurrence, except that any such rejection shall be without prejudice to the refile of a complaint within two years after such proceeding terminates if it terminates without a disposition on the merits as to the complainant;

(4) There is pending in a court of competent jurisdiction a bankruptcy or equitable receivership proceeding against one or more of the persons named as respondents in the complaint, except that any such rejection shall be without prejudice to the refile of a complaint within two years after the conclusion of such proceeding if the respondent involved is not awarded an applicable discharge;

(5) The complaint involves substantial legal or factual issues unrelated to a violation as defined in § 12.3(s) that would impede the expeditious resolution of the reparation proceeding; or

(6) The circumstances warrant such action: *Provided That* the Director obtains the specific approval of the Commission for any rejection of a complaint on the basis of such circumstances.

(d) *Notice of rejection.* If the Director rejects all or a portion of a complaint, as provided in this section, the Director shall promptly furnish the complainant a notice of rejection which shall state the reasons therefor. The complainant shall be notified that rejection of the complaint is without prejudice to the right of the complainant to seek such alternative forms of relief as may be available, and that the complainant may petition the Commission for reconsideration in accordance with § 12.36.

§ 12.23 Notice of investigation; payment of processing fee.

(a) *Notification of acceptance of complaint for investigation.* If, in the opinion of the Director, there appear to be any reasonable grounds to investigate the claim and any factual allegations therein, the Director shall so notify the complainant in writing. Such notice may identify particular respondents and allegations that the Director intends to investigate upon receipt of the processing fee. If, in the opinion of the Director, the facts or circumstances disclosed in the

complaint do not warrant calling upon a respondent to answer a complaint, the complaint shall be rejected as to that respondent, and the complainant shall be so informed in accordance with § 12.22(d).

(b) *Processing fee.* The Director's processing shall commence upon payment by the complainant of a non-refundable processing fee, by check or money order, payable to the Commission, in the amount of \$50.00. If the complainant fails to remit payment to the Commission within 30 days of the mailing of the notice or such longer period as the Director may permit, the Director may, as a matter of discretion, reject the complaint and shall so notify the complainant as provided in § 12.22(d).

§ 12.24 Preliminary investigation.

(a) *Additional material.* In conducting a preliminary investigation of the complaint and the factual allegations therein, the Director may, among other things, review any materials submitted in justification of the claim, request that the complainant submit any additional materials relevant to the claim, and contact any other persons who may have knowledge or documents relevant thereto.

(b) *Rejection of complaint after preliminary investigation.* If at the conclusion of the preliminary investigation, the Director is of the opinion that any of the grounds set forth in § 12.22 for rejection of a complaint, in whole or in part, is present, the Director shall take appropriate action as called for by that section.

§ 12.25 Notification to respondent of complaint.

(a) *Notice to respondent.* If, in the opinion of the Director, the facts set forth in a complaint warrant such action, a copy of the complaint, together with any attachments thereto and supplemental information provided to the Director in connection therewith, and an answer form, CFTC Form C-2, shall be forwarded by the Director to each respondent from whom an answer is warranted as provided in § 12.23(a) at an office previously designated with the Commission by the respondent for receipt of reparation complaints or, if no such designation has been filed with the Commission, at the respondent's principal place of business or residence as shown in the records of the Commission, which may include the address set forth on a registrant's most recent application for registration with the Commission. Copies may also be mailed to any other address provided by the complainant and to any address

identified by the Director during the course of preliminary investigation that is reasonably calculated to give notice to the respondent.

(b) *Ascertainment of respondent's address.* If no response is received from a respondent within the time prescribed by § 12.26, or if the claim is returned to the Commission by the Postal Service as undeliverable, the Director shall endeavor to ascertain another address for the respondent, except that, in any event, a respondent who is registered with the Commission or who was registered with the Commission within two years of the date the claim set forth in the complaint accrues, shall be deemed to have received notice of the complaint if the complaint was mailed to the business or residence address provided on the registrant's most recent application for registration, or to any new address that has been provided the Commission in accordance with § 1.14a of this Chapter. If the Director finds another address that appears reasonably calculated to give notice of the claim to the respondent, the Director shall also forward the complaint to such address as provided in paragraph (a) of this section. The respondent shall thereupon satisfy the claim or answer it in proper form within the time prescribed by § 12.26. If a respondent who is not registered with the Commission, or who was not registered with the Commission within two years of the date the claim set forth in the complaint accrues, is not located within a reasonable period of time, the Director shall notify the complainant that unless the complainant within 30 days, or such longer period as the Director may permit, provides an address for that respondent where notice of the complaint may be given, the Director may reject the complaint as to that respondent. Any such rejection shall be without prejudice and shall issue in accordance with § 12.22(d).

§ 12.26 Response to complaint.

Within 30 days after the Director forwards a complaint to the respondent, or within such further time as the Director may permit, each respondent shall either satisfy the complaint or answer it in writing in accordance with this section.

(a) *Satisfaction of Complaint.* A respondent may satisfy the complaint by paying to the complainant either the amount to which the complainant claims to be entitled as set forth in the complaint or such other amount as the complainant will accept in satisfaction of the claim. If a complaint is satisfied, a notice of satisfaction and withdrawal of the complaint as to that respondent

shall be filed with the Director on CFTC Form C-3 or in substantially the following form:

[Caption]

Respondent—[Name] having satisfied the reparation complaint filed against him on—[Date], by—[Name], that complaint is hereby withdrawn. Respondent by satisfying the complaint neither admits nor denies violating any provision of the Commodity Exchange Act, as amended, or any rule, regulation or order thereunder.

Complainant

Respondent

[Jurat]

If the complainant should fail or refuse to execute a notice of satisfaction and withdrawal of the complaint after the registrant has paid the complainant the amount to which the complainant has claimed to be entitled, the respondent may serve upon the complainant and file with the Commission an affidavit of satisfaction setting forth facts showing that the payment has been made. Upon the filing of a notice of satisfaction and withdrawal of the complaint as to a respondent, the proceeding shall be discontinued as to that respondent and no reparation award shall thereafter be entered against that respondent in favor of that complainant based upon the violations alleged in that complaint. In the absence of objection thereto by the complainant, an affidavit of satisfaction shall have the same effect as a notice of satisfaction and withdrawal of the complaint.

(b) *Answer*—(1) *Form and content*. The answer must be filed on a CFTC Form C-2, copies of which may be obtained from the Director without charge. The answer shall contain a precise and detailed statement of the facts which constitute the grounds for defense, and shall specifically admit, deny, or explain each of the allegations of the complaint. General denials shall be deemed an admission of the specific allegations of the complaint, and, to the extent that the allegations of the complaint are not specifically denied, the matter may be subject to the entry of a reparation award, as provided by § 12.28. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the respondent shall so state, and this will have the effect of a denial. An answer may state that the respondent admits all of the allegations of the complaint, or admits liability for a portion, but not all, of the amount claimed as damages. Each answer shall be signed personally by the individual

respondent or by a duly authorized officer or agent (who has knowledge of the matters set forth in the complaint) if the respondent is not a natural person. The respondent's signature shall be given under oath attesting that respondent has read the answer; that to the best of the respondent's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. Where a complainant alleges facts tending to prove that one or more employees or grants of a respondent have participated in the alleged violations, they shall each separately subscribe to and verify the answer or state under the penalty of perjury, in a document appended to the answer, why they have not done so. To the extent that the answer is not based upon personal knowledge the respondent shall set forth with particularity the information upon which respondent believes there is good ground to support the answer. One true copy of each and every document possessed by or available to the respondent, which support the denials or other matters of defense set forth in the answer, shall be annexed to the answer, unless they have been annexed to the complaint. The answer shall also specify whether the respondent is willing to enter into negotiations with the complainant, in an effort to effect an informal settlement of the claim.

(2) *Counterclaims*. As provided in CFTC Form C-2, an answer may set forth as a counterclaim facts alleging a violation by the complainant and a request for a reparation award that would be a proper subject for a complaint under this part or any claim which at the time the complaint is served the respondent has against the complainant if it arises out of the transaction or occurrence or series of transactions or occurrences set forth in the complaint. The Director shall have the same authority with respect to review of counterclaims as with respect to complaints.

(3) *Affidavit of service*. The respondent shall file with the answer an affidavit showing that respondent has served a true copy of the answer upon the complainant, either personally or by mail addressed to the complainant at the address set forth in the complaint.

§ 12.27 Reply to counterclaim.

If the answer asserts a counterclaim, the complainant shall file a reply to the counterclaim with the Director within 30 days after service of the answer. The reply shall be strictly confined to the matters alleged in the counterclaim, and shall in all respects conform to the requirements set forth in § 12.26(b) with

respect to the form and content and other requirements concerning an answer. A complainant may satisfy a counterclaim, as if it were a complaint, in the manner set forth in § 12.26(a).

§ 12.28 Effect of failure to answer or reply; default.

Failure timely to file an answer to a complaint which has been forwarded to a respondent as provided in § 12.25 or timely to file a reply to a counterclaim, shall be treated as an admission of the allegations of the complaint or counterclaim, and shall constitute a waiver of the right to a formal adjudicatory proceeding on the facts set forth in the complaint or counterclaim. The previously forwarded complaint, and the answer if no reply has been filed to a counterclaim set forth in the answer, shall be deemed to have been served for purposes of the entry of a reparation award in accordance with this Section. If the facts which are treated as admitted are considered insufficient to support the amount of damages sought, the Director may continue the investigation on the question of damages only. The Director may thereafter prepare a report setting forth the Director's findings and conclusions concerning the questions of violation and damages. To the extent facts are deemed to be admitted, the Commission may enter an appropriate reparation award pursuant to § 12.35.

§ 12.29 Investigation of the case.

The Director may investigate the complaint, answer, and any counterclaim to the extent and in such manner as the Director deems appropriate for the timely and efficient resolution of the complaint. If, at the conclusion of the Director's investigation, the Director is of the opinion that any of the grounds set forth in § 12.22 for rejection of a complaint in whole or in part is present, the Director shall take appropriate action as called for by that section. If there appear to be any reasonable grounds for further investigation, the Commission may investigate the complaint to the extent and in such manner as the Commission deems appropriate. If a Commission investigation is undertaken, the Director may for that reason delay transmittal of the record to the Hearing Clerk for the institution of a formal adjudicatory proceeding.

§ 12.30 Settlement—Statements of Satisfaction and Discontinuance of Proceedings.

In the course of any investigation, the Director shall seek to clarify the contested facts and issues, and small

encourage the parties to seek settlement. If, at any time prior to commencement of a formal adjudicatory proceeding, the respondent satisfies the complaint, or the complainant and respondent reach an accord as to the amount of damages that will satisfy the complaint and any counterclaim set forth in the respondent's answer, the complainant and respondent shall file with the Director a signed statement of satisfaction and discontinuance of proceeding. The proceeding will thereafter be discontinued. The statement of satisfaction and discontinuance of proceeding shall be filed with the Director on CFTC Form C-3 or its equivalent.

If after satisfaction of the complaint or counterclaim the complaining party refuses to sign a statement of satisfaction and discontinuance, a party who has satisfied a claim may file with the Director and serve on the other party a request for discontinuance to be accompanied by an affidavit setting forth in detail the facts surrounding the satisfaction or a copy of any stipulation entered into by the parties evidencing satisfaction of the complaint or counterclaim. If the request is uncontested the proceeding will be discontinued.

§ 12.31 Admission of liability for a portion of the damages claimed.

If, at any time prior to commencement of a formal adjudicatory proceeding, a respondent admits liability for a portion, but not all of the amount claimed as damages, and does not assert a counterclaim, the Commission may, unless the respondent has already made reparation, issue an order pursuant to § 12.35 directing the respondent to pay the undisputed amount on or before a date fixed in the order. Thereafter liability with respect to the remaining disputed amount shall be determined in accordance with the procedure that would have been followed if no order had been issued with respect to the undisputed sum. If the complainant admits liability for a portion but not all of the amount claimed as damage in a counterclaim, the Commission may enter an award for that amount and issue an order pursuant to § 12.35 directing the complainant to pay the undisputed amount on or before a date fixed by the order, or offset that amount from any amount awarded to the complainant.

§ 12.32 Report; Waiver of formal adjudicatory proceeding if not timely requested.

The Director shall prepare a report for each case as to which investigation has been completed and which has not been

settled. The report shall be in two parts. Part I shall succinctly describe the allegations in the claim and any counterclaim, the defense thereto, the facts admitted by the parties and the facts in dispute, and the issues which remain in contention. Part II of the report shall set forth the Director's findings and conclusions as to whether a violation resulting in damages occurred and, if so, the amount of damages incurred as a result of the violation; the validity of any counterclaim and the amount of damages incurred if the counterclaim is valid; and an analysis of the facts, issues, and circumstances leading to these conclusions. A copy of the report shall be mailed to each party together with a notice that the respondents have a right to a formal adjudicatory proceeding. The notice shall state that unless a respondent submits a timely request for a formal adjudicatory proceeding in accordance with § 12.33, the respondent shall be deemed to have consented to the entry of an order of the Commission based on the Director's report and shall be deemed to have waived the right to a formal adjudicatory proceeding and to any review by the Commission or by a court other than may be available by petition for reconsideration in accordance with § 12.36. Accordingly, if a request in writing for a formal adjudicatory proceeding is not timely received, a final order of the Commission shall be entered. In a case involving more than one respondent, the notice shall further state that, in ruling on the merits of any case in which a respondent has requested a formal adjudicatory proceeding, a Presiding Officer may draw no conclusions from the fact that any other respondent has waived the right to a formal adjudicatory proceeding.

§ 12.33 Requests for a formal adjudicatory proceeding.

A respondent may obtain a formal adjudicatory proceeding by submitting a request in writing to the Director within 45 days after the report of the Director and accompanying notice are mailed to the respondent. If a respondent requests a formal proceeding, the Director shall promptly transmit Part I of the report and copies of all documents filed by the parties in the case, except documents pertaining to settlement negotiations, to the Hearing Clerk for a formal adjudicatory proceeding. The Chief Administrative Law Judge shall notify the parties that a formal adjudicatory proceeding has been instituted.

§ 12.34 Requests for further investigation.

If, in the opinion of the Chief Administrative Law Judge, a formal adjudicatory proceeding in any case would be aided by further investigation or efforts at settlement, the Chief Administrative Law Judge may request that such further investigation or efforts be undertaken by the Director. In the event the Director concurs with the request, a written order referring the case for investigation for a specified time and a specified purpose shall be served on all parties. A case so referred may not be terminated during this additional investigatory period except with the consent of the parties and the concurrence of the Chief Administrative Law Judge.

§ 12.35 Order of the Commission pursuant to §§ 12.28, 12.31, 12.32, and 12.36.

(a) *Order prepared by the Director.* If a final order of the Commission is authorized to be entered pursuant to § 12.28, relating to default for failure to file timely an answer or a reply to a counterclaim; § 12.31, relating to admission of liability for a portion of the damages claimed; § 12.32, relating to waiver of a formal adjudicatory proceeding; or § 12.36, relating to a grant of a petition for reconsideration, the text of such order shall, unless the Commission has directed otherwise, be prepared by the Director and signed by the Secretary of the Commission, in accordance with § 140.14 of this chapter. An order prepared by the Director pursuant to this Section shall briefly set forth the facts as found by the Director, including the basis for a finding of default, admission of liability, or waiver, as the case may be.

(b) *Notification of automatic suspension of registration.* An order issued pursuant to this Section shall notify any registrant against whom it is issued that if a registrant fails timely to comply with the terms of the order, registration is automatically suspended, pursuant to section 14(h) of the Commodity Exchange Act (7 U.S.C. 18 (h)).

§ 12.36 Reconsideration.

(a) *Filing of Petition for Reconsideration.* Within 15 days after mailing of a notice rejecting a complaint in whole or in part, or of an order awarding damages by default, or of an order entered upon waiver of a formal adjudicatory proceeding, an aggrieved party may file with the Director a petition for reconsideration, setting forth the relief desired and the grounds in support thereof, and accompanied by a verified statement of fact and any other proof offered in support of the petition.

If reconsideration of an order awarding damages by default or of an order entered upon waiver of a formal adjudicatory proceeding is requested, the petitioner must state the reasons for the failure to respond timely or to request a formal adjudicatory proceeding, as the case may be. The filing of a petition for reconsideration of an order shall operate to stay the effective date of the order pending determination of the petition, and the Director shall so notify the parties to the order.

(b) *Consideration of petition; Final order.* On the basis of the facts set forth in the petition for reconsideration, the Director may prepare an order granting reconsideration pursuant to § 12.35(a). If the Director recommends denial of the petition, the Director shall prepare a report to the Commission, setting forth the reasons for the recommendation, and forward a copy of that report to the petitioner. Unless the Commission directs otherwise within 60 days of submission of the report, the Director shall thereafter prepare the text of an order denying reconsideration, which shall be signed by the Secretary of the Commission in accordance with § 140.14 of this chapter.

3. Amend the specified sections of Subparts C and D of Part 12 as follows:

Section	Amendment
Subpart C.	Designate Subpart C as [Reserved] and strike out present §§ 12.31 and 12.32.
12.33-34...	Transfer present §§ 12.33 and 12.34 to Subpart D, as §§ 12.54 and 12.55, respectively.
12.41.....	Strike out reference to "§ 12.31" and insert "§ 12.34" in its place. Strike out "or upon a default or admission of partial liability as set forth in § 12.26 or 12.33."
12.61.....	Strike out "as provided in § 12.31."
12.71(c)(2)	Delete the last sentence of this subsection.
12.71(c)....	Add the following new subparagraphs to § 12.71(c):

(c) * * *

(3) If the non-appearing party does not timely indicate his intent to continue to participate in the proceeding, the failure to appear will constitute a default of further proceedings and a default order may be sought by the appearing party. The Administrative Law Judge, upon the motion of the appearing party, may make a determination on the basis of the verified pleadings, depositions and other evidence submitted, may enter findings and conclusions concerning the questions of violation and damages, and may enter an appropriate reparation award. If the appearing party is the complainant, but the facts presented by the complainant are considered insufficient to support the amount of reparations sought, the proceeding may continue on the question of damages only.

(4) In order to prevent injustice and on such conditions as may be appropriate, the Administrative Law Judge may at any time for good cause set aside a default order or award obtained under this subsection. Any motion to set aside a default order shall be made within a reasonable time, shall state the reasons for the failure to appear, and specify the nature of the evidence or the proposed findings of fact or conclusions of law which would be presented if the default order were set aside.

4. Amend the Table of Contents for Part 12 to reflect the above changes in Subpart designation, section number, and title of Section.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

§ 140.14 [Amended]

5. Amend § 140.14 of Part 140 by adding, as the second sentence thereto, the following:

* * * The Secretary shall also sign orders with respect to reparation proceedings, as provided in § 12.35 of Part 12 of this chapter.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

6. Add a new rule 1.14a to Part I as follows:

§ 1.14a Current address for purpose of service to be filed with the Commission.

The address of each registrant, and applicant for registration, as submitted on the application for registration shall be deemed to be the address for delivery to the registrant or applicant for registration of any communications from the Commission, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant or applicant for registration specified another address for this purpose. Each registrant shall, while registered, keep current the address on the application for registration or other address filed with the Commission for the purpose of receiving communications from the Commission. An order of default may be entered in any proceeding, including a reparation proceeding commenced while the registrant is registered or within two years thereafter, for failure to file a required response to any communication sent to the latest address filed with the Commission.

Issued in Washington, D.C., on June 19, 1980.

Jean A. Webb,
Deputy Secretary of the Commission.

[CFTC Form C-1]

UNITED STATES OF AMERICA COMMODITY FUTURES TRADING COMMISSION; REPARATION COMPLAINT

Please type or print your complaint. Complaints which can not be legibly photo copied will be returned. You must furnish the original and one copy of the complaint. Please retain a copy of the complaint for your records.

1. Complainant

..... (Full name)	 1a. Attorney Representing Complainant*
..... (Residence address)	 (Name, Firm Name)
..... (City, state & zip code)	 (Address)
..... (Telephone no.—day)	 (City, state & zip code)
..... (Telephone no.—evening)	 (Telephone Number)

* It is not necessary to have an attorney to submit a complaint.

2. Respondent(s)

Please give the name and address if known, for each person and firm which you allege in this complaint to have violated the Commodity Exchange Act or any rule, regulation, or order promulgated thereunder. Your statement of fact, #4 below, must show how each named respondent committed a violation in a way which caused you financial loss.

Firm(s)	Individuals
2a. (Firm name)	 (Individual, title or position and address, if different from firm address)
..... (Address)	 (Individual, title or position and address, if different from firm address)
..... (Telephone)	
2b. (Firm name)	 (Individual, title or position and address, if different from firm address)
..... (Address)	 (Individual, title or position and address, if different from firm address)
..... (Telephone)	
2c. (Firm name)	 (Individual, title or position and address, if different from firm address)
..... (Address)	 (Individual, title and position and address, if different from firm address)
..... (Telephone)	

3. Amount of Losses Claimed

Investment: \$———
Lost Profits (if any): \$———
Please briefly explain how you have computed the amount of losses. You may claim only those actual losses which you suffered as a result of the respondents alleged violation of the Act or any rule, regulation or order promulgated thereunder. Punitive damages are not allowed. Do not claim interest, costs, or attorney fees at this time.

4. Statement of Fact

Please set forth below and, if more space is required, on as many separate 8½ x 11 sheets of paper as are necessary, a complete but concise statement of fact. Set forth the facts in a manner that will permit each fact to be answered by the person or persons alleged to have committed the violation(s). Include in your statement all relevant facts concerning each and every act or omission which it is claimed constitutes a violation, including the date and place of each act or omission, and the manner in which it injured you. If possible, set forth the specific provisions of the Act, regulation or order claimed to have been violated. If you believe a fact to be correct, but have no personal knowledge of the fact, you must set forth with particularity the information upon which you formed that belief.

Most complainants find it easiest to describe their claims by setting forth all material events in chronological order in separate numbered paragraphs. A complaint will not be accepted for any cause which accrued more than two years prior to the date the complaint is filed, although events occurring more than two years ago which lead to this complaint should be described.

A true copy of each document you have which supports your complaint (e.g., promotional material, account agreements, confirmations, monthly statements, correspondence) must be attached.

5. Other Proceedings

Describe any pending or concluded arbitration proceedings or civil court litigation of which you are aware based on the same facts involving any of the same parties named as respondents in the claim. Include the full name of the case, date filed, name of judge or arbitrator, and status of case. A complaint will not be accepted and a formal adjudicatory proceeding will not be instituted as to a respondent if there is pending any arbitration proceeding or civil court litigation brought by you against the respondent arising from the transactions described in the complaint.

6. Efforts To Settle Claim

Please describe any efforts you or anyone on your behalf has made to bring the matter complained of to the attention of the respondents or to settle the complaint, and describe the result of those efforts.

7. Statement of Understanding

Please read carefully and sign the following:

Pursuant to Section 14 of the Commodity Exchange Act, I hereby request the Commission to determine the amount of damages, if any, to which I am entitled as a result of the above stated violation(s) by

respondent(s), and to issue an order directing the respondent(s) to pay that amount on or before a date fixed by the order.

I understand that Section 14 of the Act does not confer an absolute right to a formal adjudicatory proceeding or to a reparation award and that submission of this complaint and filing fee may not necessarily result in the institution of a formal adjudicatory proceeding against any or all of the respondents named.

I recognize that I may be called upon to furnish additional information and submit to an investigation in connection with this complaint, and I hereby agree to cooperate with the Complaints Section during any investigation of the complaint, including answering relevant inquiries and providing relevant documents on request.

I will not cause any unnecessary or unreasonable delay during the processing of my complaint. I understand that my complaint may be rejected if I fail to cooperate with the Complaints Section, fail to provide requested information, or cause any unnecessary or unreasonable delay in the processing of my complaint.

I further agree to make a reasonable attempt to negotiate with each respondent a satisfactory settlement of the dispute.

Complainant

8. Verification

I declare under penalty of perjury that I have read the foregoing complaint and know the contents thereof, and that the facts set forth therein are true of my own knowledge, except as to the matters stated to be alleged on information and belief, and as to those matters I believe them to be true for the reasons set forth above.

Date

Complainant

(Attach a true copy of each and every document possessed by or available to you which evidences facts set forth in the complaint)

9. Notice to Non-Resident Complainant

If a complaint seeking reparations is filed by a non-resident of the United States, the complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States who qualifies as financially responsible for the entire amount of the bond. The bond shall be payable to the respondent named in the complaint and be conditioned upon the payment of (1) costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail; and (2) any reparation award that may be issued by the Commission against the complainant on any counterclaim asserted by the respondent. However, the furnishing of a bond may be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond. Please contact the Complaints Section, at (202) 254-3814, for further information regarding this requirement.

Mail this complaint, and one copy, to: Complaints Section, Commodity Futures

Trading Commission, 2033 "K" Street, N.W., Washington, D.C. 20581.

[CFTC Form C-2]**Commodity Futures Trading Commission; Answer to Reparation Claim (Reply to Counterclaim)**

v.

Please submit an original and one copy of this answer. Failure to file an answer, or to satisfy the complaint, within 30 days of receipt of the complaint, shall be treated as an admission of the allegations of the complaint, shall constitute a waiver of the right to a formal adjudicatory proceeding on the facts set forth in the complaint, and may result in entry of a reparation award by default.*

1. Please Correct Any Errors in the Following Information

(Full Name of Respondent)

(Address to which reparation materials should be mailed)

(Phone number at which respondent may be reached during business hours)

2. Statement of Fact

Please set forth below and, if more space is required, on as many separate 8½ x 11 sheets of paper as are necessary, a concise but detailed statement of fact constituting your answer to the complaint, and specifically admit, deny, or explain each allegation in the complaint. General denials will not be accepted. To the extent the allegations of the complaint are not specifically denied, the answer may be subject to an order in default.

Include in your statement all relevant facts concerning each and every alleged act or omission. Many respondents find it easiest to describe their defenses by setting forth all material events in chronological order. Please attach a true copy of each document you have (other than those submitted by the complainant) which supports your answer.

To the extent that the answer is not based upon personal knowledge, you must set forth with particularity the information upon which you believe there is good ground to support the answer. If you are without knowledge or information sufficient to form a belief as to the truth of an allegation, you must so state. A statement to this effect will be treated as a specific denial.

3. Counterclaim (Optional)

On as many separate 8½ x 11 sheets of paper as necessary, please give a complete

*A reply to a counterclaim must also be set forth on this form. The reply shall be strictly confined to the matters alleged in the counterclaim. Failure to reply, or to satisfy a counterclaim within thirty days, shall be treated as an admission of the allegations of the counterclaim, shall constitute a waiver of a formal adjudicatory proceeding on the facts set forth in the counterclaim, and may result in entry of an award on the counterclaim by default.

but concise statement of fact regarding any reparation claim against complainant or any claim against complainant arising out of any of the transactions set forth in the complaint.

4. Other Proceedings

Please describe any pending or concluded arbitration proceedings or civil court litigation based on the same facts and involving the same complainant and any of the respondents.

5. Statement of Efforts To Settle Claim

Please describe any effort you or your agent has made to settle the claim, and describe the results of those efforts. If you wish to admit all or any part of the allegations of the complaint, or admit liability for a portion, but not all, of the amount claimed as damages, please so indicate.

6. Verification

I declare under penalty of perjury that I have read the foregoing answer and know the contents thereof and that the facts set forth therein are true of my own knowledge except as to the matters stated to be alleged on information and belief, and as to those matters I believe them to be true for the reasons set forth above. I further declare, under penalty of perjury, that to the best of my knowledge and belief there is good ground to support this answer, and that this answer is not interposed for delay.

Respondent

(If the respondent is a corporation or non-natural person, this answer should be signed by an officer or authorized agent thereof.)

Employees or Agents of Respondent

(If the complainant alleges facts tending to prove that one or more employees or agents of a respondent has participated in the alleged violations, each such employee or agent must subscribe to and verify this answer, or state, under penalty of perjury, in a document attached to this answer, why he has not done so.)

7. Attorney Representing Respondent (if applicable)

(Name, Firm Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

8. Affidavit of Service

I hereby certify that on _____, _____, I caused to be mailed or served personally a copy of this answer to [complainant] _____ at _____.

(Respondent or Agent)

Note.—A respondent may satisfy the complaint in whole or in part by paying to the complainant either the amount to which the complainant claims to be entitled as set forth in the complaint or such other amount as the complainant will accept in satisfaction of the claim. If a complaint is satisfied, a notice of satisfaction and withdrawal of the complaint as to that respondent shall be filed with the Complaints Section on CFTC Form C-3.

[CFTC Form C-3]

United States of America Commodity Futures Trading Commission; Statements of Satisfaction and Discontinuance of Proceedings

[Caption]

Respondent _____ [Name] having satisfied the reparation complaint filed against him on _____ [Date], by _____ [Name] that complaint is hereby withdrawn.

Complainant

Respondent

[Jurat]

—or—

[Caption]

Respondent _____ [Name] having satisfied the reparation complaint filed against him on _____ [Date], by _____ [Name] and the complaint _____ [Name] having satisfied the counterclaim asserted against him in respondent's answer filed with the Commission on _____ [Date], the complaint and counterclaim are hereby withdrawn.

Complainant

Respondent

[Jurat]

Notice.—Respondent by satisfying the complaint, and complainant by satisfying a counterclaim, neither admits nor denies violating any provision of the Commodity Exchange Act, as amended, or any rule, regulation or order thereunder. If after satisfaction of the complaint or counterclaim the complaining party refuses to sign a Statement of Satisfaction and Discontinuance, a party who has satisfied a claim against him may file with the Commission and serve on the other party a motion for discontinuance to be accompanied by an affidavit setting forth in detail the facts surrounding the satisfaction or a copy of any stipulation entered into by the parties evidencing satisfaction of the complaint or counterclaim. If the motion is uncontested the proceeding will be ordered discontinued.

[FR Doc. 80-19111 Filed 6-23-80; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 251

Trader's Licenses

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Proposed Rulemaking—Extension Comment Period.

SUMMARY: On April 25, 1980, a Notice of Proposed Rulemaking was published on page 27952 of the Federal Register.

Inadvertently, the public comment period was shortened by 10 days. To correct this discrepancy, notice is given that the public comment period is extended. [Comments will be accepted on or before July 24, 1980.]

DATE: Comments by July 21, 1980.

ADDRESSES: Comments should be mailed to: Eugene F. Suarez, Sr., Chief, Division of Law Enforcement Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets NW, Room 1342, Washington, D.C. 20245.

Ralph R. Reeser,

Acting Deputy Assistant Secretary—Indian Affairs.

June 11, 1980.

[FR Doc. 80-19070 Filed 6-23-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 4

Service Contract Act; Labor Standards For Federal Service Contracts; Further Extension of Comment Period

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed Rule; Further Extension of Comment Period.

SUMMARY: This document further extends the period for filing comments regarding a proposed rule intended to revised Part 4 of Title 29 of the Code of Federal Regulations (29 CFR Part 4) which concerns Labor Standards for Federal Service Contracts. This action is taken to permit additional comment from the public.

DATE: Comments must be received on or before July 25, 1980.

ADDRESS: Comments should be sent to Mrs. Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins, Department of Labor

Building, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins, Department of Labor Building, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone: 202-523-8333.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 28, 1979 (44 FR 77036) the Department of Labor published a proposed rule intended to revise 29 CFR Part 4 which concerns Labor Standards for Federal Service Contracts. Interested persons were requested to submit comments on or before February 26, 1980. Extensions of the period for comment, until June 26, 1980, have previously been granted.

Because of the continuing interest of the public in this proposal, the agency believes that it is desirable to grant a further extension of the comment period for all interested persons. Therefore, the comment period for the proposed rule, revising 29 CFR Part 4 (Labor Standards for Federal Service Contracts), is extended to July 25, 1980.

Signed at Washington, D.C., this 20th day of June, 1980.

Donald Elisburg,
Assistant Secretary of Labor, Employment Standards Administration.

[FR Doc. 80-19082 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

30 CFR Parts 71 and 90

Respirable Dust; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Extension of time for closing of record.

SUMMARY: In Part III of the Federal Register for Tuesday, April 8, 1980 (45 FR 24007), proposed rules which would amend coal mine mandatory health standards, Title 30, Code of Federal Regulations, Parts 71 and 90, were published. Interested persons were given until June 20, 1980, to submit written comments, suggestions, and objections to the proposals. In response to requests, the period of time within which to submit comments is extended to July 7, 1980, to allow all interested persons the fullest opportunity to submit meaningful comments on the proposals.

DATES: The rulemaking record for proposed Parts 71 and 90 is extended to July 7, 1980. All comments, suggestions,

and objections to the proposed rules must be received by that date.

ADDRESS: Send comments for the record to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Frank A. White, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, phone: (703) 235-1910.

SUPPLEMENTARY INFORMATION: Public hearings on the proposed revisions to Parts 71 and 90 were held in four locations on June 3 and 5, 1980. Since these hearings, MSHA has received requests that the rulemaking record remain open beyond June 20, 1980.

To allow all interested persons the fullest opportunity to submit meaningful comments on the proposals, MSHA has determined that an extension of time should be granted. Therefore, the date for the submission of comments for the rulemaking record on Parts 71 and 90 is extended to July 7, 1980. Interested persons who have submitted comments may also submit additional comments within the time specified.

Dated: June 19, 1980.

Frank A. White,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-19081 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining, Reclamation and Enforcement

30 CFR Parts 700, 701

Definition of Surface Coal Mining Operations; Proposed Rulemaking

AGENCY: Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this rulemaking proceeding is to resolve any lingering ambiguity as to the meaning of "surface coal mining operations," as the term is used in both the interim and permanent programs under the Act. This is accomplished by redefining that term to reflect more clearly the meaning that OSM believes Congress intended.

DATES: Written comments must be received at the address below on or before July 24, 1980, by no later than 5 p.m. A public hearing will be held beginning at 9:30 a.m. on July 16, 1980.

ADDRESSES: Written comments should be addressed to: Office of Surface Mining, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington D.C. 20044, or may be hand-delivered to: Office of Surface Mining, Room 153, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, where all comments will be available for inspection. The public hearing will be held in Room 8070, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard Robinson, Office of Surface Mining, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343-8061, or Mark Squillace, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343-4671.

SUPPLEMENTARY INFORMATION: *Public Hearing:* Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of testimony will be helpful in facilitating the transcription of the testimony. Advance submission of a written statement would also be helpful in providing OSM officials who attend the hearing with an opportunity to consider appropriate questions in areas where clarification or elaboration is needed.

The public hearing will continue on the day identified above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and who wish to do so will be heard at the end of scheduled speakers. The hearing will end after all people scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

Background

Section 701(28) of the Act defines "surface coal mining operations" as—

(A) *Activities* conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other

chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: Provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16% per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to section 512 of this Act; and

(B) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities except for haulage, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities of other property or materials on the surface, resulting from or incident to such activities. (Emphasis added.)

The definition thus encompasses two categories; activities conducted on the surface of land in connection with a surface coal mine or an underground mine with surface effects, and those areas upon which such activities or the effects of such activities occur.

Through the use of examples, the statutory definition offers some guidance as to the scope of activities that are connected with a mine operation. It is unclear from the syntax alone, however, whether the phrase "at or near the mine site" at the end of the examples in paragraph (A), modifies only the phrase immediately preceding it, i.e. "loading of coal for interstate commerce," or whether it also modifies "the cleaning, concentrating or other processing or preparation." In the interim program regulations, the statutory definition of "surface coal mining operations" was adopted verbatim. With the promulgation of the permanent regulations on March 13, 1977, 30 CFR Part 700, the definition of "surface coal mining operations," was amended, see 44 FR 15312 (1977), with minor changes not relevant to the problem addressed here. In the preamble to these regulations, however, OSM stated its intent that "at or near the minesite" modify only the phrase "loading of coal for interstate commerce." See 44 FR 15095, 15293. OSM's interpretation of the Act in the preamble to the permanent program failed, however, to persuade the Interior Board of Surface Mining and Reclamation Appeals that the definition in the interim rules was not ambiguous.

Western Engineering, 1 IBSMA 202, 211 n. 9 (1979). In that case, *Western Engineering*, which operated a coal preparation and loading facility along a river, was cited by OSM for failure to comply with certain performance standards under the interim program. While acknowledging that the statutory definition of "surface coal mining operations" could be read as OSM contended, the Board held that, as a legal matter, the ambiguity should be resolved in favor of *Western*.

The Board has yet to consider OSM's authority to regulate coal processing facilities after the new rules were promulgated although OSM believes that the preamble to these rules plainly disposes of this question in favor of federal regulation. Moreover, in *In re Permanent Surface Mining Regulation Litigation*, Civ. No. 79-1144 (D.D.C., May 16, 1980) Judge Flannery recently held that the Secretary had correctly construed the definition of "surface coal mining operations," so as to encompass coal processing facilities whether or not they are located "at or near the mine site." In reaching this conclusion, the court did not even deem it necessary to resort to the preamble explanation of the definition notes above. (Slip opinion at 52).

To avoid further confusion on this issue, however, and to more fully advise the public of OSM's interpretation of the Act OSM proposes to redefine "surface coal mining operations" so as to specifically include coal preparation and processing facilities within the jurisdiction of the Act, whether or not they are at or near the mine site, so long as such activities are connected with a mine operation subject to the Act. This is accomplished simply by incorporating the phrase "loading of coal for interstate commerce at or near the mine site" into a separate sentence. For purposes of this definition, the loading of coal does not include such activities as the crushing or sizing of coal. These activities are considered part of coal processing and preparation.

In addition to the above change, the definition of "coal processing plant" at 30 CFR 701.5 is revised to clarify that the chemical or physical processing of coal is included within its scope regardless of whether that processing is accompanied by the separation of coal from its impurities. This change is intended to make the rules more fully consistent with the language of the Act defining "surface coal mining operations," 30 U.S.C. 1291(28), and to reflect more clearly OSM's original intent.

OSM believes that these proposed rules reflect Congress' intent. Congress was aware of the serious environmental and safety problems that can accompany the processing and preparation of coal, and intended that such problems should be controlled. The House Report on the Act states that it would "implement a national system of coal mining regulation by—(1) covering all coal surface mining * * * and the surface impacts of underground mines and coal processing; * * *" H.R. Rep. No. 95-218, 95th Cong., 1st Sess. 57 (1977). (Emphasis added.) Moreover, many times throughout the legislative history, Congress cited the Buffalo Creek disaster as the kind of tragedy it expected the Act to prevent. See e.g., H.R. Rep. No. 95-218, 95th Cong., 1st Sess. 85 (1977); H.R. Rep. No. 94-1445, 94th Cong., 2d sess. 19 (1976). The disaster at Buffalo Creek resulted from the collapse of a refuse dam at a coal preparation facility in West Virginia. This facility processed coal from five underground mines, two auger mines and one surface mine. Given Congress' intent to prevent future disasters of the kind that occurred at Buffalo Creek, OSM does not believe that the authority to regulate coal processing or preparation facilities was intended to depend on the fortuitous circumstance of one or more of the mines serviced being sufficiently near the facility to be deemed at or near the mine site. Indeed, such a construction would encourage circumvention of the Act by allowing operators to avoid regulation by locating their processing facilities away from the mine sites.

In preparing the permanent regulatory program OSM assumed that the interpretation set forth in this rule, as it is proposed to be amended, was the interpretation that would be given to the rule as adopted. See e.g., 44 FR 15095, 15293 (1979). Accordingly, the Director, OSM has determined that this rulemaking is within the scope of the regulatory analysis and environmental impact statement that were prepared for the permanent regulatory program under the Act. Permanent Regulatory Program of the Surface Mining Control and Reclamation Act of 1977; Final Regulatory Analysis, OSM-RA-1 (1979); Permanent Regulatory Program implementing Section 501(b) of the Surface Mining Control and Reclamation Act of 1977; Final Environmental Impact Statement, OSM-EIS-1 (1979).

Drafting Information

The primary author of this proposed rulemaking is Mark Squillace, Office of the Solicitor.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

June 13, 1980

PART 700—GENERAL

Section 700.5 is proposed to be amended as follows:

§ 700.5 [Amended]**Surface coal mining operations means—**

(a) Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface operations and surface impacts incident to an underground coal mine, the products of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. *Provided*, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16% per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and *provided further*, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) Areas upon which the activities described in paragraph (a) above occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface,

resulting from or incident to those activities; and

PART 701—PERMANENT REGULATORY PROGRAM

Section 701.5 is proposed to be amended as follows:

§ 701.5 [Amended]

Coal processing plant means a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing or separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities.

[FR Doc. 80-19014 Filed 6-23-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[FRL 1524-1]

Approval and Promulgation of Implementation Plans; Proposed Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking.

SUMMARY: On March 11, 1980 (45 FR 15531) the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act. In part, this conditional approval required that by April 1, 1980 the State submit to EPA: (1) An acceptable description of the State's transportation planning process highlighting those changes made to the existing process so as to integrate air quality planning concerns and to address applicable SIP commitments, (2) a summary of the manpower and financial resources at the State, local and regional levels which are being devoted to ensure a coordinated effort in transportation-air quality planning, and (3) a description of the comprehensive and systematic program which will be used for the selection of needed transportation control measures.

The purpose of this notice is to advise the public that on April 22, 1980 the

State provided to EPA a submittal addressing these three conditions. Based on its review of the material submitted, EPA is proposing to approve it and invites public comment on this proposed action.

DATES: Comments must be submitted on or before August 25, 1980.

ADDRESSES: All comments should be addressed to: Charles S. Warren, Regional Administrator, Region II Office, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

Copies of the proposed SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II, Air Programs Branch, Room 908, 26 Federal Plaza, New York, New York 10007.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460.

New Jersey Department of Environmental Protection, Bureau of Air Pollution Control, John Fitch Plaza, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch Environmental Protection Agency, 26 Federal Plaza, Room 908, New York, New York 10007, 212-264-2517.

SUPPLEMENTAL INFORMATION:**I. Background**

On March 11, 1980 at 45 FR 15531, the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act. The reader is referred to this *Federal Register* notice for a detailed discussion of the New Jersey SIP and EPA's review findings. Among its provisions the SIP includes measures to reduce motor vehicle related air pollution. These measures include improved coordination among interstate, State, regional and local authorities in the area of transportation planning, a comprehensive review of the present regulatory and financial structure of public transportation in the State, a commitment of State, federal, and other funds to transit capital improvements, and the examination and experimental trail of certain "reasonably available" transportation control measures. The New Jersey SIP also includes commitments to study and evaluate various potential air pollution control measures related to motor vehicle use.

In its review of the SIP EPA found that the State's program for the study and

evaluation of needed transportation control measures was deficient in that it did not adequately identify the process and steps needed to bring each measure to implementation. The March 11, 1980 Federal Register noted that methods to track, assess and report on the adequacy of the transportation planning process to address air quality concerns were lacking in the State's submittal. Such methods include the development of criteria for determining conformity of transportation plans, programs and projects with the SIP and the identification of reasonable emission reduction goals to be obtained from changes made to the transportation system. Moreover, EPA noted a failure to identify the products to be obtained from each study, key decision points (technical, political, financial, etc.) to be reached in determining whether a measure is reasonable, the relationship between the various studies and measures to ensure that each measure is being addressed adequately and efficiently, and the time schedule for these activities. In addition, the New Jersey SIP did not contain a description of a comprehensive and systematic program for the selection of needed transportation control measures or an identification of funds and manpower necessary to insure a coordinated effort by involved State, regional and local participants in the transportation-air quality planning process.

As a result of these shortcomings, in its March 11, 1980 Federal Register notice EPA promulgated three conditions on its approval of the New Jersey SIP revision which appear at 40 CFR 52.1581, Part D—Conditions on approval, and are repeated for reference in the following Section of this notice. Today's notice describes the State's submittal and discusses EPA's review findings.

II. The State Submittal and Its Adequacy

A. Introduction

On April 22, 1980 the Commissioners of the New Jersey Departments of Environmental Protection and Transportation provided to EPA a submittal designed to meet the three transportation related conditions on approval of the State's plan revision. The submittal is presented in three discrete sections, each of which addresses one of the three conditions.

B. The Transportation Planning Process

1. Condition

The following condition is promulgated at 40 CFR 52.1581(b)(1):
On or before April 1, 1980 the State must submit to EPA an acceptable

description of its transportation planning process which highlights those changes made to the existing process so as to integrate air quality planning concerns and to address applicable SIP commitments.

2. Content of Submittal

The State's April 22, 1980 submittal includes a document entitled, "The Transportation Planning Process in New Jersey." This document contains four sections: (1) "Introduction," (2) "The Transportation Planning and Project Implementation Process for County and Municipal Roadways," (3) "The Transportation Planning and Project Implementation Process for State Highways," and (4) "The Transportation Planning and Project Implementation Process for Public Transportation."

The "Introduction" outlines the basic principals of the cooperative, comprehensive, and continuing (3C) transportation process (required by section 134 of Title 23 of the United States Code), lists the six Metropolitan Planning Organizations (MPOs) in New Jersey that are involved in the 3C process, and discusses the role of the MPOs as lead agencies in the preparation of SIP revisions. The "Introduction" then notes that the planning process discussion is somewhat generalized as each of the MPOs vary to some extent in structure.

The three sections that follow the "Introduction" deal with specific process steps used in both the planning and the implementation of county and municipal roadway, State highway, and public transportation projects. Each of these sections discusses in some level of detail the following aspects of the transportation planning process:

- Prospectus
- Unified Planning Work Program (UPWP)
- Transportation Plan
- Program selection
- Transportation Improvement Program (TIP) adoption
- Other program requirements
- Project implementation

and the following project implementation process steps:

- Level of Action
- Preliminary Engineering (PE)
- Right of way acquisition
- Construction

Many of the activities in the planning and implementation processes are noted as having been modified to specifically reflect transportation-air quality and SIP considerations. Among these are those activities involved in the development of the Prospectus, UPWP, Transportation Plan, and, to some extent, the TIP and PE work. However, other activities in

the process are simply described and show no evidence of transportation-air quality related changes. Of particular note in this regard are activities related to the development of a "Section 105" program for submittal to the Federal Highway Administration. Inclusion of a project in this program is prerequisite to the receipt of federal funding authorization and ultimate construction. Certain projects can be included in the Section 105 program without appearing in the TIP and therefore, would not necessarily be subject to the planning process.

The submittal also indicates that each MPO will develop criteria for the assessment of consistency and conformity between the TIP and the SIP. However, the principles that will be used in assessing consistency and conformity, are not discussed.

3. Adequacy

EPA finds that the "Transportation Planning Process in New Jersey" document is adequate to satisfy the condition and proposes to approve its provisions as a part of the SIP. Specific changes have been made to a number of aspects of the transportation planning process to accommodate, on a priority basis, transportation-air quality and SIP concerns. Also, the submittal commits the MPOs to the development of criteria for the assessment of the TIP and other plans, programs and projects for consistency and conformity with the SIP.

However, EPA is still somewhat concerned about how air quality concerns are considered in the section 105 program and, therefore, intends closely to follow the annual development of this program. Also, EPA expects that the criteria for consistency and conformity ultimately developed will, at a minimum, be capable of being used to evaluate: (1) The adequacy of the transportation-air quality planning process, including its public participation program, (2) adherence to specific SIP commitments (e.g., projects), and (3) the adequacy of transportation plans, programs and projects in meeting necessary air quality improvement goals.

C. Resources

1. Condition

The following condition is promulgated at 40 CFR 52.1581(b)(2):

On or before April 1, 1980 the State must submit to EPA a summary of the manpower and financial resources at the State, local and regional level which are being devoted to ensure a

coordinated effort in transportation-air quality planning.

2. Content of Submittal

The April 22, 1980 submittal also includes a document entitled, "Personnel and Financial Resources for Transportation-Air Quality Planning." The financial and manpower information is presented in five parts: (1) Tri-State Regional Planning Commission (TSRPC) and its subregions, (2) Delaware Valley Regional Planning Commission (DVRPC), (3) Small Urban Areas, (4) New Jersey Department of Transportation (NJDOT), and (5) New Jersey Department of Environmental Protection (NJDEP).

Most of the information shown for TSRPC and its subregions, DVRPC, NJDOT, and NJDEP is for fiscal year 1980 Work Programs and describes tasks that are presently underway. The information on manpower resources is presented in a format which outlines the amount of time expended by various types of employees at each agency on transportation-air quality planning tasks. Financial resources are presented in a dollar per task format. Tasks described in the submittal include ongoing coordination and administration functions, those related to specific transportation, air quality, institutional, economic and other studies, and preparation and presentation of the 1982 SIP revision.

The resource and manpower commitments made for the Atlantic City Urban Area Transportation Study (ACUATS), the Cumberland County Urban Area Transportation Study (CCUATS), and the Phillipsburg Urban Area Transportation Study (PUATS) are based upon applications for federal funds which are presently being prepared. As such, they represent future commitments to the transportation-air quality planning work necessary to develop the 1982 SIP revision.

The resource commitment made for the Salem County portion of the Wilmington Metropolitan Area Planning Coordinating Council (WILMAPCO) area has been made in a provision of a transportation-air quality grant to WILMAPCO. Final disposition of the manpower levels are currently being decided upon. Quick resolution is committed to the State's submittal.

3. Adequacy

EPA finds that the manpower and resource commitments made in the proposed SIP revision for TSRPC and its subregions, DVRPC, NJDEP and NJDOT are adequate in that they represent minimally acceptable levels of effort. Moreover, EPA has recently been

informed that NJDEP will hire an additional transportation planner and that TSRPC, DVRPC, and NJDOT are in the process of preparing grant requests to pursue their commitments. EPA expects that these manpower and resource levels will, at a minimum, be maintained until the submittal of the 1982 SIP revision. At that time the resource commitments can be reevaluated.

The manpower and resource commitments for the three small urban areas (ACUATS, CCUATS, PUATS) are based upon anticipated EPA grants. The level of commitment appears adequate to carry out required transportation-air quality programs for these areas through 1982. The resource commitment for the Salem County portion of the WILMAPCO appears adequate. The commitment to quick action in finalizing the manpower situation is acceptable. Consequently, EPA proposes to approve the State's submittal with regard to its identification and commitment of adequate resources.

D. Program for Selection of Needed Transportation Control Measures

1. Condition.

The following condition is promulgated at 40 CFR 52.1581(b)(4): On or before April 1, 1980 the State must submit to EPA a description of the comprehensive and systematic program which will be used for the selection of needed transportation control measures.

2. Content of Submittal

The State's submittal also included a document entitled, "Program for Selection of Needed Transportation Control Measures, April 1980." This document describes the program that the State will use to select needed transportation control measures, including those measures to be included in the 1982 SIP submittal, and to bring the selected measures to implementation.

The discussion of the selection program can be viewed as essentially consisting of two parts: (1) The main body which describes generally how transportation control strategy selection and development will occur, and (2) a series of attachments which describe actual activities and timetables that will be used by specific agencies with transportation-air quality planning responsibilities.

The general description of the program describes the overall approach that will be used by the involved agencies in the selection of needed transportation control measures. This section outlines the general division of

transportation-air quality planning responsibilities among NJDEP, NJDOT, MPOs, counties and cities. It further describes the evaluation process that will be used in the selection of needed transportation control measures, the relationship between actions that will take place at the various levels of government, the public participation program and intergovernmental coordination liaison. The submittal refers the reader to several MPO, subregional, and county work programs and schedules for transportation-air quality planning, which are attached.

While no specific work programs or schedules are discussed in this portion of the submittal for NJDOT and NJDEP, it does refer to previously prepared Memoranda of Understanding (MOUs) (see 45 FR 15531, March 11, 1980) which outline the roles of these agencies and commits NJDOT to support the evaluation of statewide strategies. Additional information about the work to be done by NJDOT and NJDEP in the selection of transportation control measures appears in the material pertaining to the other two conditions discussed in today's notice.

In the second part of the document transportation-air quality work programs are included for:

- Delaware Valley Regional Planning Commission,
- Tri-State Regional Planning Commission,
- Bergen County,
- Hudson County,
- Middlesex County,
- Monmouth County,
- Morris County,
- The City of Jersey City,
- Passaic County, and
- Somerset County.

(Since the receipt of this submittal, Ocean County and Union County have prepared proposed work programs and submitted them for EPA review for funding support. EPA wishes to note that proposed work programs for the City of Newark and Essex County had been expected by April 1, 1980, but are now behind the TSRPC schedule, which is also part of this submittal. It is imperative that work programs for these areas be completed so that the State can demonstrate that it is making all reasonable efforts to develop the 1982 SIP revision).

The work programs submitted describe a wide variety of strategy analysis strategy selection, citizen participation, public hearing, SIP preparation and SIP presentation tasks. The task descriptions include specific steps that will be used in analysis and execution as well as budgets and manpower levels in some cases.

Transportation—air quality planning schedules outlining specific milestones in transportation process were presented for the following areas:

- Atlantic County,
- Cape May County,
- Cumberland County,
- Delaware Valley Regional Planning Commission,
- Phillipsburg Urban Area Transportation Study,
- Salem County, and
- Tri-State Regional Planning Commission.

The schedules for Atlantic County, Cape May County and Cumberland County indicate that transportation—air quality work programs will be prepared during May and June 1980. While the Phillipsburg Urban Area Transportation Study area does not have a specific transportation—air quality planning work program, the State notes that PUATS will handle this work through the existing transportation planning program.

No Work Program or schedule is available for the Salem County portion of the Wilmington Metropolitan Area Coordinating Committee area. The SIP submittal commits to prompt resolution of this situation.

3. Adequacy.

EPA finds that the "Program for the Selection of Needed Transportation Control Measures" commitments made in the submittal is adequate as a minimally acceptable program for the execution of transportation—air quality work and the preparation of transportation components of the 1982 SIP revision. However, EPA encourages the State and other involved governments to identify interim milestones in addition to those provided. This will allow greater opportunity to monitor the progress of tasks and increase the likelihood of doing all the tasks essential to the success of the effort. EPA has been advised that work program development is proceeding according to schedule in Atlantic County, Cape May County and Cumberland County and that work program development has begun in the Salem County portion of WILMAPCO, the City of Newark, Essex County and Union County.

Consequently, EPA proposes to approve the State's submittal with regard to its identification and commitment to a program for the selection of needed transportation control measures.

III. Public Comment

This notice is issued as required by Section 110 of the Clean Air Act, as

amended, to advise the public that comments may be submitted as to whether the proposed revision to the New Jersey State Implementation Plan should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of sections 110 and 172 of the Clean Air Act and applicable EPA requirements in 40 CFR Part 51. This current SIP revision request was submitted to EPA in accordance with the appropriate CFR conditions.

EPA particularly invites comments from the metropolitan Planning Organizations, their subcommittees, and any other agencies or organizations which are committed through the provisions of the State's submittal to transportation-air quality or SIP-related responsibilities. Section 174(b) of the Clean Air Act requires that SIP revisions be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of Title 23 of the United States Code. This process is administered by MPOs. Although the State's submittal draws heavily upon plans and programs developed by these groups, it provides no evidence that it has been formally presented to them. It is for this reason that EPA particularly solicits MPO comments and encourages the State to present its document to the MPOs for their information, consideration and endorsement.

Comments received by August 25, 1980, will be considered in EPA's final decision. All comments received will be available for inspection at the Region II Office of EPA at 26 Federal Plaza, Room 908, New York, New York 10007.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this package and determined that it is a specialized regulation not subject to the procedural requirements of executive Order 12044.

(Sec. 110, 172, 301, Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601)).

Dated: May 30, 1980.

Charles S. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 80-18885 Filed 6-23-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1523-7]

Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions for the State of Illinois

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is proposing to approve Illinois' State Implementation Plan which has been revised to comply with USEPA regulations contained in 40 CFR Part 58. The plan provides for the implementation of a statewide network for ambient air quality monitoring and data reporting. USEPA has determined that the plan meets requirements for quality assurance of the monitoring stations, network design and probe citing criteria, and monitoring methods to be used.

DATE: Comments must be received by no later than July 24, 1980.

Address Comments To: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

For Further Information Contact: Boniface Thayil, Environmental Engineer, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6058.

Copies of the State Implementation Plan (SIP) revision and supporting documents are available at the address cited above and at:

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706.

Supplementary Information

Requirements for Air Quality Surveillance Network

Section 319 of the Clean Air Act, as amended requires the United States Environmental Protection Agency (USEPA) to establish monitoring criteria to be followed uniformly across the Nation. Pursuant to this requirement and the recommendations of the Standing Air Monitoring Work Group (SAMWG), USEPA, on May 10, 1979 (44 FR 27558), promulgated Rules and Regulations for Ambient Air Quality Monitoring, Data Reporting, and Surveillance Provisions. The regulations revoke Part 51 of Title

40 of the Code of Federal Regulations and establish a new Part 58 entitled Ambient Air Quality Surveillance.

40 CFR 58.20 requires that the State adopt and submit to the administrator a revision to the plan which will:

(a) Provide for the establishment of an air quality surveillance system that consists of a network of monitoring stations designated as State and Local Air Monitoring Stations (SLAMS) which measure ambient concentrations of those pollutants for which standards have been established in [40 CFR Part 50].

(b) Provide for meeting the requirements of Appendices A, C, D, and E to this part.

(c) Provide for the operation of at least one SLAMS per pollutant during any stage of an air pollution episode as defined in the contingency plan.

(d) Provide for the review of the air quality surveillance system on an annual basis to determine if the system meets the monitoring objectives defined in Appendix D to this part. Such review must identify needed modifications to the network such as termination or relocation of unnecessary stations or establishment of new stations which are necessary.

(e) Provide for having a SLAMS network description available for public inspection and submission to the Administrator upon request. The network description must be available at the time of plan revision submittal and must contain the following information for each SLAMS:

(1) The Storage and Retrieval of Aerometric Data (SAROAD) site identification form for existing stations.

(2) The proposed location for scheduled stations.

(3) The sampling and analysis method.

(4) The operating schedule.

(5) The monitoring objective and spatial scale of representativeness as defined in Appendix D to this part.

(6) A schedule for:

(i) Locating, placing into operation, and making available the SAROAD site identification form for each SLAMS which is not located and operating at the time of plan revision submittal;

(ii) Implementing quality assurance procedures of Appendix A to this part for each SLAMS for which such procedures are not implemented at the time of plan revision submittal; and

(iii) Resiting each SLAMS which does

not meet the requirements of Appendix E to this part at the time of plan revision submittal.

Illinois Air Quality Surveillance Network

On December 20, 1979, the State of Illinois submitted to USEPA a SIP revision to provide for an Air Quality Surveillance Network. The Illinois network has been deployed according to the monitoring plan submitted to and approved by USEPA in 1972 as part of the SIP.

Section 6.3 of the Illinois SIP provides for the implementation of a statewide SLAMS and National Air Monitoring Stations (NAMS) monitoring system to meet the requirements of 40 CFR Part 58. This system will be derived from the existing State air monitoring system with adjustments and additions made where necessary. The revised network will provide reliable data for pollutants for which State and National Ambient Air Quality Standards (NAAQS) exist to meet the requirements of 40 CFR Part 58, Appendix C (Ambient Air Quality Methodology).

Section 6.3 provides a detailed review of the network objectives, description, and operation criteria. It also describes the criteria to be followed in air quality data reporting.

Besides establishing SLAMS and NAMS (a subset of SLAMS), § 6.3 provides for the establishment of Special Purpose Monitoring Stations (SPMS). These monitoring stations will be operated for the purpose of SIP development. SPMS will meet the requirements established for SLAMS.

Section 6.3 states that SLAMS will be used to monitor episode levels of sulfur dioxide, carbon monoxide, nitrogen dioxide, and ozone. Reporting criteria for violation episodes are given in 40 CFR Part 58. Particulate matter episode monitoring will be performed in accordance with 40 CFR Part 58 Appendix C. Data from NAMS will be used for national policy and trend analyses and for reports to the public in major urban areas.

All SLAMS monitoring in Illinois will be operated in accordance with criteria given in Subpart B of 40 CFR Part 58. Each SLAMS monitor will meet the siting requirements given in 40 CFR Part 58, Appendix E, and each instrument will be operated in compliance with 40 CFR Part 58, Appendix C. Quality assurance procedures will be developed and implemented to comply with 40 CFR Part 58, Appendix A.

The entire air monitoring system will be reviewed annually in accordance with the monitoring objectives defined in 40 CFR Part 58, Appendix D (Network

Design for State and Local Air Monitoring Stations and National Air Monitoring Stations). A report of the findings of this annual review will be submitted to the USEPA by July 1 of each year.

Air quality data from SLAMS will be reported to the USEPA in accordance with § 58.26 of Subpart C of 40 CFR Part 58. This report will also contain annual precision and accuracy estimates as required under § 5.2 of Appendix A of 40 CFR Part 58, and summary statistics as specified in Appendix F. A report of each air pollution episode during which ambient pollutant levels exceed the significant harm level, as specified in § 51.16 of 40 CFR Part 51, will also be made annually.

USEPA has reviewed the submittal and has determined that it meets the requirements of sections 110 and 319 of the Clean Air Act, as amended, and USEPA regulations in 40 CFR Part 58. USEPA is therefore, proposing approval of the revised Illinois Air Quality Surveillance Plan.

Interested persons are invited to comment on the revised Illinois SIP and on USEPA's proposed actions. Comments should be submitted to the address listed in the front of this Notice. Public Comments received on or before July 24, 1980, will be considered in USEPA's final rulemaking. All comments received will be available for inspection at Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

This Notice of Proposed Rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: May 30, 1980.

John McGuire,
Regional Administrator.

[FR Doc. 80-18986 Filed 6-23-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1523-5]

Approval and Promulgation of Implementation Plans; North Carolina: 1979 Revisions for Nonattainment Areas—Receipt of Supplemental Submittal

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: On April 17, 1980 (45 FR 26038), EPA announced its conditional approval of the implementation plan revisions which North Carolina had submitted for the Mecklenburg County ozone and carbon monoxide

nonattainment area pursuant to the requirements of Part D of Title I of the Clean Air Act as amended in 1977. Under the terms of that conditional approval, the State was to submit certain materials by April 15, 1980: Revised regulations 2D.0903 and 2D.0931, a regulation providing for the alternative analysis required by section 172(b)(11)(A) of the Clean Air Act, and various elements of transportation control measures. These were adopted on April 10, 1980, by the North Carolina Environmental Management Commission, and submitted to EPA by the Division of Environmental Management on May 2, 1980. So the conditional approval of April 17, 1980, continues in effect. EPA is now reviewing the materials just submitted and will soon take final action on the Mecklenburg County ozone plan. Since still more supplemental material is needed before the carbon monoxide plan can be approved (details of the implementation and enforcement of a vehicle inspection and maintenance program, due to be submitted by June 30, 1980), EPA will defer action on this plan until all necessary elements of it have been received.

ADDRESSES: Copies of the materials submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, D.C.
Library, EPA Region IV, 345 Courtland
Street, NE., Atlanta, Georgia 30308.
Air Planning and Environmental
Standards Branch, Division of
Environmental Management, North
Carolina Department of Natural
Resources & Community
Development, 512 North Salisbury
Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT:
Walter Bishop, EPA Region IV Air
Programs Branch, 345 Courtland Street,
NE., Atlanta, Georgia 30308, 404/881-
3043 (FTS 257-3043).

(Secs. 110, 172, Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: June 11, 1980.

John A. Little,
Acting Regional Administrator.

[FR Doc. 80-18988 Filed 6-23-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1523-4]

Approval and Promulgation of Implementation Plans, Maine; Receipt of Implementation Plan Revision; Sulfur Dioxide Attainment Plan for Millinocket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Submittal to Satisfy Condition of Plan Approval.

SUMMARY: This notice is to announce the receipt of a State Implementation Plan (SIP) revision for Maine. The Sulfur Dioxide Attainment Plan for Millinocket was submitted on April 25, 1980 to satisfy a condition of EPA's recent approval of Maine's Attainment Plan SIP revisions which were required under Part D of the Clean Air Act. Maine's submittal amends the SIP by completing the attainment plan for Millinocket.

DATES: See Supplementary Information.

ADDRESSES: Copies of the Maine submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; and Bureau of Air Quality Control, Department of Environmental Protection, State House, Augusta, Maine 04330.

FOR FURTHER INFORMATION CONTACT:
Brian Hennessey, Air Branch,
Environmental Protection Agency,
Region I, Room 1903, JFK Federal
Building, Boston, Massachusetts 02203,
(617) 223-4448.

SUPPLEMENTARY INFORMATION: EPA published a final rulemaking in the Federal Register on February 19, 1980 (45 FR 10766) conditionally approving Maine's Attainment Plan SIP revisions submitted on May 1, 1979. These revisions were found to be in substantial compliance with the requirements of Part D of the Clean Air Act, since they implement new measures for controlling air pollution which will result in attainment of primary National Ambient Air Quality Standards by December 31, 1982. However, one of the conditions of approval of the Attainment Plan was that by April 30, 1980 the state must submit as a SIP revision a modeling analysis indicating that upset conditions at the Great Northern Paper Company's magnesium oxide recovery stack in Millinocket do not violate National Ambient Air Quality Standards (NAAQS).

Maine has submitted a SIP revision adding a modeling analysis of NAAQS violations in Millinocket. EPA is presently reviewing the state's submittal and intends to publish a proposed rulemaking notice in the Federal Register by June 30, 1980. The conditional approval of the SIP will continue until EPA's final action is published in the Federal Register.

Dated: June 11, 1980.

William R. Adams, Jr.,
Regional Administrator, Region I.

[FR Doc. 80-18988 Filed 6-23-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FI-5358]

National Flood Insurance Program; Proposed Flood Elevation Determinations; correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Ridgebury, Bradford County, Pennsylvania, previously published at 44 FR 21680 on April 11, 1979.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872, (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-Year) flood elevations for selected locations in the Township of Ridgebury, Bradford County, Pennsylvania, previously published at 44 FR 21680 on April 11, 1979, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and CFR 67.4(a).

In order for the following locations in the Township of Ridgebury to be more easily identified with the corresponding Flood Insurance maps and profiles, the descriptions should be amended to read

as follows. The elevations are correct as cited.

Source of flooding	Location	Elevation in feet national geodetic vertical datum
Bentley Creek	Downstream corporate limits	*872
	Pennsylvania legislative route 08068 (upstream)	*957
	Confluence of Justice Run	*1,008
	Township route 374 (downstream crossing)	*1,031
	Pennsylvania legislative route 08144 (upstream)	*1,056
	Township route 374 (upstream crossing)	*1,103
	Approximately 280 feet downstream of Ridgebury Road	*1,142
Three Falls Glen	Township route 374	*969
Justice Run	Township route 374	*1,018
	Approximately 380 feet downstream of Monkey Run Road	*1,125
Buck Creek	Pennsylvania legislative route 08059	*1,129
	Approximately 5,800 feet above mouth	*1,158

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: June 6, 1980.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 80-18996 Filed 6-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 350

[Docket No. FEMA-PP-350]

Review and Approval of State and Local Radiological Emergency Plans and Preparedness

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish policy and procedures for review and approval by FEMA of State and local emergency plans and preparedness for coping with the offsite effects of radiological emergencies which may occur at nuclear power facilities. The rule does not cover other Nuclear Regulatory Commission (NRC) licensed facilities. The rule sets out criteria which will be used by FEMA in reviewing, assessing and evaluating these plans and preparedness; it specifies how and where a State may submit plans; it describes certain of the processes by which FEMA makes findings and determinations as to the adequacy of State and local plans and the capability of State and local

government to effectively implement these plans and preparedness measures for specific sites. Such findings and determinations and, where appropriate, plan approvals are to be submitted to the Governors of the affected States and to the NRC for use in licensing proceedings of the NRC.

DATE: Comments are due on or before August 25, 1980. It is intended, after careful consideration has been given to the comments and appropriate adjustments made, to make the regulation, which is primarily procedural, effective immediately upon its adoption.

ADDRESS: Send comments to Rules Docket Clerk, Federal Emergency Management Agency, Room 801, 1725 I Street NW., Washington, D.C. 20472.

FOR ADDITIONAL INFORMATION CONTACT: John McConnell, Assistant Associate Director, Population Preparedness, telephone 202/566-0550.

SUPPLEMENTARY INFORMATION:

Presidential assignments

On December 7, 1979, the President, in response to the recommendations of the President's Commission on the Accident at Three Mile Island (known as the Kemeny Commission) announced, in part, a series of decisions and took a number of actions in the area of emergency planning and preparedness, particularly with respect to offsite emergency planning and preparedness. The President directed FEMA to:

- (1) Take the lead in offsite emergency planning and response;
- (2) Complete by June 1980, the review of State emergency plans in those States with operating nuclear power facilities;
- (3) Complete as soon as possible the review of State emergency plans in those States with nuclear power facilities scheduled for operation in the near future;
- (4) Develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and clearly define procedures for coordination and direction for both emergency planning and response.

FEMA is presently reviewing existing State and local plans in accordance with the Presidential directive.

FEMA is also in the process of developing interagency assignments which will replace a description of assignments set out in a Notice published in the Federal Register on December 24, 1975 (40 FR 59494). It is FEMA's intent to publish these new assignments in separate rulemaking.

The rule in this part largely involves the process FEMA will use in taking the

lead in offsite emergency planning and response. It provides for the review of plans by a formal process for evaluation and approval by FEMA of State plans (which include local plans as annexes to the State plan) and evaluation and assessment of the adequacy of capabilities of State and local governments to implement the plans.

Basis for FEMA Assignment

The Director, FEMA, pursuant to Reorganization Plan No. 3 of 1978 and Executive Order 12148 of July 20, 1979 establishes policies for, and coordinates civil emergency planning, management, mitigation and assistance functions of the Executive agencies of the United States. The Director FEMA, represents the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response and recovery programs.

The term "civil emergency" is defined in 2-203 of Executive Order 12148 to include any accidental, natural, man-caused, or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property. This definition clearly encompasses an accident at a nuclear power facility.

Under section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), the Director is to establish a program of disaster preparedness which includes, among other matters, preparation of disaster preparedness plans for warning, emergency operations, training and exercises, and coordination of Federal, State and local programs. Further, the Director is to provide technical assistance to States in developing comprehensive plans and practical programs for preparation against disasters.

The agencies which were combined to form the nucleus of FEMA, as well as NRC have been for some years involved in planning for radiological emergencies at nuclear power facilities. These activities were voluntary, as neither Federal law nor regulations required States or local governments to have peacetime nuclear emergency plans, nor required States with plans to test those plans.

The Atomic Energy Commission (AEC) later NRC, implemented a nonstatutory program of planning and assistance to the States which included: The formation of a Federal Interagency Central Coordinating Committee (FICCC); the preparation and issuance of *Guide and Checklist for Development and Evaluation of State and Local*

Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities, reissued as NRC NUREG-75/111; and the formation of task forces on training and exercises and emergency instrumentation.

The Office of Emergency Planning (OEP), later the Federal Preparedness Agency (FPA) and now FEMA issued descriptions of agency assignments. In January 1973, the OEP issued a statement that the AEC, as lead agency, would provide planning assistance to State and local governments for the preparation of radiological emergency response plans.

On December 24, 1975, the FDA reissued a revised and updated Federal Register Notice (40 FR 59494). Lead agency responsibility for "reviewing and concurring in State radiological emergency response plans," was assigned to the NRC and the planning assistance was expanded to include transportation of radioactive materials. NRC also issued guidance—*Radiological Emergency Response Planning, Handbook for Federal Assistance to State and Local Governments* NUREG 0093, June 1, 1976—applicable to other Federal agencies. The number of involved agencies who all agreed to the assignments increased to eight. These included the Environmental Protection Agency (EPA), the Department of Health, Education and Welfare, now the Department of Health and Human Service, (DHHS) and the Defense Civil Preparedness Agency (DCPA) whose functions have now been transferred to FEMA. Other agencies included the Department of Transportation (DOT), the Federal Disaster Assistance Administration (FDAA-HUD) (now a part of FEMA), and the Energy Research and Development Administration (ERDA) (now Department of Energy (DOE)).

This interagency process with NRC as lead agency continued for the next few years. The NRC established a program of voluntary concurrence and concurred in several State plans. The accident at the Three Mile Island nuclear power facility which occurred on March 28, 1979, caused a major rethinking of the whole area of emergency plans and preparedness by NRC and by other authorities. The accident led to the Kemeny Commission Report and the Presidential actions.

To implement the President's assignment, NRC and FEMA on January 14, 1980, signed a Memorandum of Understanding (MOU) describing each agency's responsibilities in preparing for emergencies at nuclear facilities and activities (45 FR 5847).

The agreement applies to emergency preparedness for all commercial nuclear power plants, certain nuclear fuel cycle facilities, and nuclear materials licenses whose operations have a potential for significant accidental offsite releases of radiation. However, the parties intended that the initial program emphasis be placed on emergency preparedness at commercial nuclear power plants. This rule deals only with nuclear power facilities.

Among other matters under the MOU, FEMA's responsibilities are:

(1) To take the lead in off-site emergency planning and review and assess state and local emergency plans for adequacy.

(2) To complete by June 1980, the review of State and local emergency plans in those States with operating reactors.

(3) To complete, as soon as possible, the review of State local emergency plans in those States with plants scheduled for operation in the near future.

(4) To make findings and determinations as to whether State and local emergency plans are adequate and capable of implementation (e.g. adequacy and maintenance of procedures, training, resources, staffing levels and qualifications and equipment adequacy).

(5) To assume responsibility for emergency preparedness training of State and local officials.

(6) To develop and issue an updated series of interagency assignments which would delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response.

The NRC responsibilities for emergency preparedness are:

(1) To assess licensee emergency plans for adequacy.

(2) To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications and equipment adequacy).

(3) To review the FEMA findings and determinations on the adequacy and capability of implementation of State and local plans.

(4) To make decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness on-site as determined by the NRC and off-site as determined by FEMA and reviewed by NRC) and issuance of operating licenses or shut down of operating reactors.

Thus, the lead for review of the adequacy of offsite emergency plans

and their capability of implementation has been placed in FEMA and there is no longer an NRC voluntary concurrence program for State emergency plans. This activity is now ended, and to that extent the notice of December 24, 1975, is superseded. The previous NRC "concurrences" do not satisfy all the requirement for FEMA approval of State and local plans under this regulation.

FEMA review and findings and determinations will be based upon guidance jointly issued by FEMA and NRC entitled *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants* NUREG-0654/FEMA-REP-1. This guidance and acceptance criteria provides a basis for NRC licensees and State and local governments to develop radiological emergency plans and improve emergency preparedness associated with nuclear power facilities. The document combines the guidance to State and local governments with the guidance to the licensees of NRC and supersedes previous guidance and criteria published by FEMA and NRC. It is intended for use by reviewers in reviewing and assessing the adequacy of State, local and nuclear power facility operator emergency plans and preparedness. FEMA-REP-1/NUREG 0654 contains a series of planning objectives (which are part of this rule) and a listing of specific criteria for preparation and evaluating of the planning and preparedness activities of State and local governments as well as of the licensees of NRC. The document is presently being revised by NRC and FEMA as a result of public comment submitted pursuant to a Notice published on February 13, 1980 at 45 FR 9768. It is the intent that the planning objectives in this rule will be in exactly the same words as the planning objectives in a NRC rule on Emergency Preparedness (See 44 FR 75167).

That NRC rulemaking procedure contains additional material relevant to this rule in the materials cited therein. This rule has been prepared in coordination with the NRC emergency planning and preparedness rule.

In this connection it should be noted that the wording of § 350.9(e) may be somewhat different from that in NRC regulations because their rules are written for licensees. But it is the intent that the meanings of the respective rules are the same.

NRC retains overall responsibility for making decisions under their enabling legislation in determining whether licenses should be issued or operations suspended. NRC expects to evaluate

deficiencies, if any, identified by FEMA to ascertain whether those deficiencies are significant and if they are significant, determine whether compensatory measures have been or will be taken by the licensee.

FEMA's approval of State and local plans and preparedness should be considered independently of any rules of the NRC with respect to its licensing proceedings. The rule proposed in this part is in no way dependent upon any authority available to the NRC. However, recognition must be given to the fact that the NRC now will base its findings on a review of FEMA findings and determinations as to whether State or local plans are adequate and capable of being implemented. The regulation described in this part is designed with that FEMA review function in mind. Proposed § 350.12(f) provides an appeal procedure to the Director from the decision of the Associate Director. Procedures for processing appeals are not established as yet but will be incorporated in the final rule or will be the subject of a separate rule dealing with appeals in Federal Emergency Management Agency programs generally.

Hearing procedures will be made a part of the final rule.

This regulation describes a procedure by which FEMA evaluates and assesses State and local emergency plans and preparedness to deal with a radiological emergency, and "approves" such plans. Further, FEMA may use the date obtained in its approval process to support its findings in Nuclear Regulatory Commission licensing proceedings and any related court actions; and during any related discovery proceedings.

Insofar as FEMA is concerned, there is no requirement in law that a State or local government submit its plan to FEMA, and FEMA's failure to approve such plan is not accompanied by any sanction or refusal to accord a benefit. Insofar as the procedure may have economic, environmental or legal consequences or impact, these result from NRC action on its rule and from the role which FEMA plays because of the MOU in the NRC licensing process. NRC has in connection with its rule adopted a "Finding of No Significant Impact" and has made an environmental assessment which covers actions covered by this regulation. In the interest of reducing paperwork and pursuant to CEQ regulations 40 CFR 1506.3, FEMA herein adopts as part of its own decision making process that part of the NRC assessment applicable to this rule. For the final rule FEMA plans to develop its own assessment.

Further the NRC statement addresses the subject of cost, and it is clear from this that neither the NRC rule, nor this FEMA rule is a significant regulation which requires a regulatory analysis under Executive Order 12044.

Pending adoption of the final rule, FEMA intends to use generally the process described herein in "approval" of any plan which might be submitted to it before the rule becomes final.

Accordingly, it is proposed to amend Subchapter E of Chapter I, Title 44 Code of Federal Regulations by adding a new Part 350 as follows:

PART 350—REVIEW AND APPROVAL OF STATE RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

Sec.

- 350.1 Purpose.
- 350.2 Definitions.
- 350.3 Background.
- 350.4 Exclusions.
- 350.5 Criteria for review and approval of State and local Radiological Emergency Plans and Preparedness.
- 350.6 Assistance in development of State and local Plans.
- 350.7 Application by State for review and approval.
- 350.8 Initial FEMA Action on State plan.
- 350.9 Exercises.
- 350.10 Public meeting in advance of FEMA approval.
- 350.11 Action by FEMA Regional Director.
- 350.12 FEMA Headquarters review and approval.
- 350.13 Withdrawal of approval.
- 350.14 Amendment to State plans.
- 350.15 Hearings [Reserved].

Authority: 42 U.S.C. 5131, 5201, 50 U.S.C. App. 2253(g) Reorganization Plan No. 3 of 1978 (3 CFR 1973 Comp. p. 329), Executive Order 12127 (44 FR 19367), Executive Order 12148 (44 FR 43239).

§ 350.1 Purpose.

The purpose of the regulation in this part is to establish policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of State and local emergency plans and preparedness for the offsite effects of a radiological emergency which may occur at a nuclear power facility. Review and approval of these plans and preparedness involves preparation of findings and determinations with respect to the adequacy of the plans and the capabilities of State and local governments effectively to implement the plans.

§ 350.2 Definitions

As used in this part the following terms have the following meanings:

Director means, the Director, Federal Emergency Management Agency;

Regional Director means a Regional Director of FEMA;

Associate Director means Associate Director, Plans and Preparedness (FEMA);

NRC means the Nuclear Regulatory Commission;

EPZ means Emergency Planning Zone.

§ 350.3 Background.

(a) On December 7, 1979, the President directed the Director to take the lead in State and local emergency planning and preparedness activities with respect to nuclear power facilities. This included a review of the existing emergency plans both in States with operating reactors, and those with plants scheduled for operation in the near future.

(b) This assignment was given to FEMA in view of its responsibilities under Executive Order 12148 to establish Federal policies for, and coordinate civil emergency planning, management and assistance functions, and to represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness programs. Under Section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), and other statutory functions, the Director, FEMA, is charged with the responsibility to develop and implement plans and programs of disaster preparedness.

(c) To carry out these responsibilities, FEMA is engaging in a cooperative effort with State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with the offsite effects resulting from radiological emergencies at nuclear power facilities.

(d) FEMA has entered into a memorandum of understanding (MOU) with the NRC to which it will furnish assessments, findings and determinations as to whether State and local emergency plans and preparedness are adequate and continue to be capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). These findings and determinations can be used by NRC under its own rules in connection with its licensing and regulatory requirements and FEMA will support its findings in the NRC licensing process and related court proceedings.

§ 350.4 Exclusions.

The regulation in this part does not apply to, nor will FEMA apply any criteria with respect to, any evaluation, assessment or determination regarding the NRC licensee's emergency plans or preparedness, nor shall FEMA make any

similar determination with respect to integration of offsite and NRC licensee emergency preparedness except as these assessments and determinations affect the emergency preparedness of State and local governments. The regulation in this part applies only to State and local planning and preparedness with respect to emergencies at nuclear power facilities and does not apply to other facilities which may be licensed by NRC.

§ 350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.

(a) The following joint NRC-FEMA planning objectives, which apply insofar as FEMA is concerned to State and local government, are to be used in evaluating, assessing, reviewing and approving State and local radiological emergency plans and preparedness and in making any findings and determinations with respect to the adequacy of the plans and the capabilities of State and local governments to implement the plans. It is the intent that the planning objectives set out herein are identical to those of NRC.

(1) Primary responsibilities for emergency response by the nuclear facility licensee, and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established, and each principal response organization has staff to respond and to augment its initial response on a continuous basis.

(2) On-shift facility operator responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, and timely augmentation of response capabilities is available, and the interfaces among various onsite response activities and offsite support and response activities are specified. (This objective applies to NRC licensees but is included here for completeness).

(3) Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made, and other organizations capable of augmenting the planned response have been identified.

(4) A standard emergency classification and action level scheme whose bases include facility system and effluent parameters is in use by the nuclear facility licensee, and State and

local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

(5) Procedures have been established for notification, by the licensee, of State and local response organizations and for notification of emergency personnel by all response organizations; and content of initial and followup messages to response organizations and the public have been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

(6) Provisions exist for prompt communications among principal response organizations, to emergency personnel and to the public.

(7) Information is made available to the public on a period basis on how they would be notified and what their initial actions should be in an emergency (e.g. listening to a local broadcast station and remaining indoors) the principal points of contact with the news media for dissemination of information during an emergency (including physical location or locations) are established in advance; and procedures for coordinated dissemination of information to the public are established.

(8) Adequate emergency facilities and equipment to support the emergency response are provided.

(9) Adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

(10) A range of protective actions has been developed for the plume exposure EPZ pathway for emergency workers and the public, guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

(11) Means for controlling radiological exposures, in an emergency, are established for workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills;

deficiencies identified as a result of exercises or drills are corrected.

(15) Radiological emergency response training is provided to those who may be called upon to assist in an emergency.

(16) Responsibilities for plan development and review and distribution of emergency plans are established and planners are properly trained.

(b) In order for State or local plans and preparedness to be approved, such plans and preparedness must be determined to adequately protect the public health and safety by providing reasonable assurance that appropriate protective measures can and will be taken offsite in the event of a radiological emergency. Plans and preparedness will be evaluated using the objectives set forth in paragraph (a) of this section and as detailed in FEMA REP 1/NUREG 654 and other criteria as specified in this part.

§ 350.6 Assistance in development of State and local plans.

(a) An integrated approach to the development of offsite radiological emergency plans by States, localities and the licensees of NRC with the assistance of the Federal Government is the approach most likely to provide the best protection to the public. Hence Federal agencies, including FEMA regional staff, will be made available upon request to assist State and localities in the development of plans.

(b) There now exists in each of the ten Standard Federal Regions, a Regional Assistance Committee (RAC) (formerly the Regional Advisory Committee) chaired by a FEMA regional official and having members from Nuclear Regulatory Commission (NRC), Department of Health and Human Services (DHHS), Department of Energy (DOE), Department of Transportation (DOT), Environmental Protection Agency (EPA), and Department of Agriculture (DOA). The basic functions of the RAC are to assist State and local government officials in preparing and revising radiological emergency plans, and improving the preparedness capabilities of State and local governments for dealing with accidents and emergencies at nuclear power facilities.

(c) In accomplishing the foregoing, the RACs will use the criteria in FEMA-REP-1/NUREG 654, and will render such technical assistance as may be required. The RACs will also observe and evaluate exercises and identify in a timely fashion deficiencies in the planning and preparedness effort including deficiencies in resources,

training of staff, equipment, staffing levels, and deficiencies in the qualifications of personnel.

§ 350.7 Application by State for review and approval.

(a) A State which seeks review and approval by FEMA of the State's radiological emergency plan, with annexes (which for purposes of this part includes the plans of all local governments for all jurisdictions wholly or partially within the plume exposure pathway EPZ for the applicable nuclear power facility and for the host jurisdictions in the event of an evacuation), shall submit an application for such review and approval to the FEMA Regional Director of the Region in which the State is located. The application, in the form of a letter from the Governor or from such other State official as the Governor may designate, shall contain one copy of the completed State plan, including the plan for the ingestion pathway. The application shall specify the site or sites for which plan approval is sought.

(b) Generally, the plume exposure pathway EPZ for nuclear power facilities shall consist of an area about 10 miles (16 Km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power facility shall be determined in relation to the emergency response needs and capabilities as they are affected by such local conditions as demography, topography, land characteristics, access routes, and local jurisdictional boundaries. The size of the EPZs may be determined by NRC in consultation with FEMA on a case-by-case basis for gas cooled reactors and for reactors with an authorized power level less than 250 Mw thermal. The plans for the ingestion pathway shall focus on such actions as are appropriate to protect the food ingestion pathway.

(c) FEMA and the States will make suitable arrangements in the case of overlapping or adjacent jurisdictions to permit an orderly assessment and approval of interstate or interregional plans.

(d) Only a State may request review of a State or local radiological emergency plan. The State will designate the unit(s) of the local government whose plans will be submitted as annexes to the State plan.

(e) A State may submit separately its plans for the EPZ's and the local government plans specific to the plume exposure pathway EPZ for individual nuclear power facilities. The purpose of separate submissions is to allow

approval of a State plan, and of the plans necessary for specific nuclear power facilities in a multi-facility State, while not approving or acting on the plans necessary for other nuclear power facilities within the State. If separate submissions are made, appropriate adjustments in the State plan may be necessary.

(f) The application shall contain a statement that the State plan, together with its annexes, is, in the opinion of the State, adequate to protect public health and safety of its citizens living within the emergency planning zones for the nuclear power facilities included in the submission by providing reasonable assurance that appropriate protective measures can and will be taken by State and local governments within the emergency planning zone in the event of a radiological emergency for the site in question.

§ 350.8 Initial FEMA action on State plan.

(a) The Regional Director shall acknowledge in writing the receipt of such an application to the State within ten days of its receipt.

(b) FEMA shall cause to be published in the Federal Register within 30 days after receipt of the application, notice that an application from a State has been received and that copies are available at the Regional Office for review and copying in accordance with § 5.26, Subpart C of Part 5 and Appendix A to Part 5 of this chapter.

(c) The Regional Director shall furnish copies of the plan to members of the RAC for their analysis and evaluation.

(d) The Regional Director shall make a detailed review of the plan together with its annexes, and will assess the capability of the State or local governments to effectively implement the plan. Such review should, in addition to application of the criteria specified in § 350.5, consider (1) the integration of planning of the NRC licensee with the localities around the nuclear facility and the State, and the linkage between plans, and (2) elements dealing with notification, communications, public information, equipment, accident assessment, drills and exercises and emergency planning zones recommended by FEMA, NRC and EPA for planning around nuclear power facilities.

(e) In connection with the review, the Regional Director may make suggestions to States concerning perceived gaps or deficiencies in the plans, and the State may amend the plan at any time prior to forwarding to the Associate Director.

(f) Two conditions for FEMA approval of State plans (including local government annexes) call for activity

during regional review and prior to the forwarding of the plan to the Associate Director. These are the requirement for a complete exercise, see § 350.9, and for public participation, see § 350.10.

§ 350.9 Exercises.

(a) FEMA approval of State plans (and appropriate local government annexes) shall in each case be site specific.

(b) Before a Regional Director can forward a State plan and annexes to the Associate Director for approval, the State together with all necessary local governments must conduct a complete exercise of that State plan, involving participation of appropriate local government entities, the State and the appropriate licensee of NRC. To the extent achievable, this exercise shall include participation by appropriate Federal agencies. This exercise shall be observed and evaluated by FEMA and to the extent possible by representatives of other agencies with membership on the RACs, and by NRC with respect to licensee response. Following the debriefing of all involved parties, if the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials and, to the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements.

(c) The Regional Director of FEMA shall be the FEMA official responsible for certifying to the Associate Director that a complete exercise of the State plan has been conducted, and that any deficiencies noted in the exercise have been corrected and such corrections incorporated in the plan.

(d) On an annual basis, all nuclear power facilities will be required by NRC to exercise their plans and the exercises should involve annual exercising of the appropriate local government plans in support of these facilities. The State may choose to limit its participation in exercises at facilities other than the facility (site) chosen for the annual exercise(s) of the State plan.

(e) For continued FEMA approval, each State and appropriate local governments shall conduct an exercise jointly with a nuclear power facility at least annually. However, States with more than one facility (site) shall schedule exercises such that each individual facility (site) is exercised in conjunction with the State and appropriate local government plans not less than once every three years for sites with the plume exposure pathway EPZ

partially or wholly within the State and not less than once every five years for sites with the ingestion exposure pathway EPZ partially or wholly within the State. The State shall choose, on a rotational basis, the site(s) at which the required annual exercise(s) is to be conducted, and priority shall be given to new facilities seeking an operating license from NRC, and which have not had an exercise involving the State plan at the facility site.

(f) After FEMA approval of a State and local plan has been granted, failure to exercise the State and local plans on the frequency described in this section shall be grounds for withdrawing FEMA approval (see § 350.13).

§ 350.10 Public meeting in advance of FEMA approval.

During the FEMA Regional Office review of a State plan, and prior to the submission by the Regional Director of the plan to the Associate Director, the FEMA Regional Director shall assure the conduct of at least one public meeting in the vicinity of the nuclear power facility. The purpose of such a meeting, which may be conducted by the State or by the Regional Director, shall be to acquaint the members of the public in the vicinity of each facility with the content of the State and related local plans, to answer any questions about FEMA review and to receive suggestions from the public concerning improvements or changes that may be necessary; and to describe to the public the way in which the plan is expected to function in the event of a real emergency. The Regional Director should assure that representatives from appropriate State government agencies, local and county agencies and the affected utility appear at such meetings to make presentations and to answer questions from the public. These meetings shall be noticed in the local newspaper having the largest circulation in the area on at least two occasions one of which is at least two weeks before the meeting takes place and the other is within a few days of the meeting date. Local radio and television stations should be notified of the scheduled meeting at least one week in advance. Representatives from NRC and other appropriate Federal agencies should also be invited to participate in these meetings. If, in the judgment of the FEMA Regional Director, the public meeting or meetings reveal gaps or deficiencies in the State plan, the Regional Director shall inform the State of the fact together with recommendations for improvement. No FEMA approval of State and local plans shall be made until a meeting described in this paragraph shall have been held at

or near the nuclear power facility site for which the State is seeking approval.

§ 350.11 Action by FEMA Regional Director.

(a) Upon completion of his/her review including conduct of the exercise required by § 350.9 and after the public meeting required by § 350.10, the Regional Director shall prepare an evaluation of the State plan, including plans for local governments. Such evaluation shall be specific with respect to the plans applicable to each nuclear facility so that findings and determinations can be made by the Associate Director on a site specific basis.

(b) The Regional Director shall evaluate the adequacy of State and local plans and preparedness on the basis of the criteria set forth in § 350.5, and shall report that evaluation with respect to each of the planning objectives mentioned therein as such apply to State and local plans and preparedness. The Regional Director evaluation report may also address any of the other criteria contained in FEMA REP 1 (NUREG 0654) "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," or in other guidance issued by FEMA or by NRC as such apply to State and local offsite radiological emergency plans and preparedness. This evaluation will not include a recommendation on approval.

(c) The Regional Director shall forward the State plan together with his or her evaluation and other relevant record material to the Associate Director for Plans and Preparedness.

§ 350.12 FEMA Headquarters review and approval.

(a) Upon receipt from a Regional Director of a State plan, the Associate Director shall cause copies of the plan together with the Regional Director's evaluation to be distributed to the members of the Federal Interagency Central Coordinating Committee (FICCC) and to other offices of FEMA with appropriate guidance relative to their assistance in the FEMA review process.

(b) The Associate Director shall conduct such review of the State plan as he or she shall deem necessary.

(c) Within 30 days after submission of the State plan by the Regional Director, if the Associate Director, finds and determines that the State plans and preparedness:

(1) are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that

appropriate protective measures can and will be taken offsite in the event of a radiological emergency; and

(2) are capable of being implemented (see § 350.3(d)), the Associate Director shall approve, in writing the State plan. The Associate Director shall communicate this FEMA approval to the Governor of the State in question and the NRC and immediately shall cause to be published in the Federal Register a notice to this effect.

(d) If the Associate Director is not satisfied with the adequacy of the plan or preparedness with respect to a particular site, he or she shall communicate that decision to the Governor(s) of the State(s), to any involved licensee, to the NRC or other interested person, together with a statement in writing explaining the reasons for the decision and requesting appropriate plan or preparedness revisions. Such statement shall be transmitted to the Governor(s) through the appropriate Regional Director(s).

(e) The approval shall be of the State plan together with the local plans (which are annexes to the State plan) for each nuclear power facility (including out of State facilities) for which approval has been requested. FEMA may withhold approval of plans applicable to a specific nuclear power facility in a multi-facility State, but nevertheless approve the State plan and associated local plans applicable to other facilities in a State. (Approval may be withheld for a specific site until plans for all jurisdictions within the emergency planning zones of that site have been reviewed and found adequate.)

(f) Within 30 days after the date of notification of approval for a particular nuclear power facility or within 30 days of any statement of inadequacy or withdrawal of approval of a State Plan, any interested person may appeal the decision of the Associate Director to the Director; however, such appeal must be made solely upon the ground that the Associate Director's decision, based on the available record was unsupported by substantial evidence. See § 350.15 for hearing procedures.

§ 350.13 Withdrawal of approval.

(a) If, at any time after granting approval of a State plan, the Associate Director determines, on his or her own initiative, motion or on the basis of information another person supplied, that the State or local plan is no longer adequate to protect public health and safety by providing reasonable assurance that appropriate protection measures can be taken, or is no longer capable of being implemented, he or she

shall immediately advise the Governor of the affected State and NRC of that initial determination in writing. FEMA shall spell out in detail the reasons for its initial determination and shall describe the deficiencies in the plan or the preparedness of the State. If, after four months from the date of such an initial determination, the State in question has not (1) either corrected the deficiencies noted, or (2) submitted an acceptable plan for correcting those deficiencies, the Associate Director shall withdraw approval, and shall immediately inform NRC and the Governor of the affected State, of the determination to withdraw approval and shall cause to be published in the Federal Register and the newspaper having the largest daily circulation in the affected State, notice of its withdrawal of approval. Such action by the Associate Director is subject to the appeal procedure specified in § 350.12(f).

(b) In the event that the State in question shall submit a plan for correcting the deficiencies, the Associate Director shall negotiate a schedule and timetable under which the State shall cure the deficiencies. If, on the agreed upon date, the deficiencies have been cured, the Associate Director shall withdraw the initial determination and the approval previously granted shall remain valid and shall inform the Governor(s), and the NRC. If, however, on the agreed upon date, the deficiencies are not cured, FEMA shall withdraw its approval and shall communicate its decision to the Governor of the State whose plan is in question, to the NRC, and to the appropriate Federal agencies and notify the public as above.

§ 350.14 Amendments to State plans.

(a) The State may amend a plan submitted to FEMA for review and approval under § 350.11 at any time during the review process or may amend a plan at any time after FEMA approval shall have been granted under § 350.12. A State must amend its plan in order to extend the coverage of the plan to any new nuclear power facility which becomes operational after a FEMA approval or in case of any other significant change. The State plan shall remain in effect as approved while any significant change is under review.

(b) Unimportant changes (such as a change in a telephone number) should be forwarded to the Regional Director.

(c) A significant change will be processed in the same manner as if it were an initial plan submission. However, the Regional Director may determine that certain procedures, such as holding a public meeting would be

unnecessary in connection with an amendment.

(d) A significant change is one which involves the evaluation and assessment of a planning objective or which involves a matter which if presented with the plan would need to have been considered by the Associate Director in making a decision that State or local plans and preparedness are: (1) Adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and (2) Capable of being implemented.

§ 350.15 Hearing [Reserved]

Dated: June 8, 1980.

John W. Macy, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 80-18994 Filed 6-23-80; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[Gen. Docket No. 80-284; FCC 80-335]

Verification and Methods of Measurement of Computing Devices

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Proposal to formalize the methods of measurements and procedure for verifying compliance of electronic equipment subject to the new FCC Rules Part 15 for computing devices. The new standards, which are designed to control interference caused by computers and similar electronic equipment, were adopted by the Commission on September 18, 1979 in a First Report and Order in FCC Docket 20780.

DATES: Comments are requested by July 31, 1980. Reply comments are requested by August 15, 1980.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Art Wall, Office of Science and Technology, Telephone no. 202-653-8128.

In the matter of amendment of Parts 2 and 15 of the rules relating to verification and methods of measurement of computing devices (Gen. Docket No. 80-284).

Adopted: June 11, 1980.

Released: June 20, 1980.

1. Notice is hereby given of rulemaking to formalize the method of measurement and the procedure for verification of computing devices subject to the technical standards in Subpart J of Part 15 (47 CFR Parts 15 Subpart J).

2. The new technical standards are designed to control the interference caused by computers and similar digital electronic equipment to radio and TV reception. These standards were adopted by the Commission in a *First Report and Order* (hereafter *First Report*) in FCC Docket 20780 on September 18, 1979 (44 FR 59530). The effective date of the new rules along with some other changes was revised by the Commission in an *Order Granting Reconsideration* (hereafter *Reconsideration Order*) on March 27, 1980 (45 FR 24154).

3. In the *First Report*, the Commission indicated interested parties would be given an opportunity to comment on the method of measurement described in paragraph 62 of the *First Report*. The proposed procedures are given in Appendix A, attached. In general, the proposed test procedures follow recognized methods of measurement of radio frequency (RF) emissions. These procedures follow the draft *American National Standard Method of Low Voltage Electrical and Electronic Equipment in the Frequency Range of 10 kHz to 1GHz, ANSI C63.4, Draft No. 7*.

The major exceptions to this draft method are given as follows:

The instrumentation specified

The measuring antenna must be varied in height and polarization

A ground plane shall be required for standard test sites using the 3 and 10 meter test distances and is optional for the 30 meter test distance.

4. The proposed test procedures in Appendix A are specifically intended for measuring both conducted and radiated radio frequency emissions from computing devices, as defined in Part 15 of FCC Rules. However, since the proposed procedures are general, we invite comments on how these procedures may be used for measuring RF emissions from other devices subject to FCC emission requirements. For example, the proposed procedures may be modified for measuring RF emissions from radio receivers subject to Subpart C of Part 15. Therefore, comments are solicited on the applicability of these procedures for radio receivers and other devices. In the event the comments received indicate the proposed procedure is applicable for measuring

other devices, a future proceeding will address the consolidation of measurement procedures for other devices subject to FCC emission requirements.

5. When finalized, the test procedures will be used for determining compliance of computing devices with the technical standards in Subpart J of Part 15 of FCC Rules. In lieu of including these procedures in Subpart I of Part 15, as originally proposed in the footnotes of §§ 15.810, 15.812, 15.830 and 15.832, the new test procedures will be published in a report to be distributed by the National Technical Information Service (NTIS), Springfield, Virginia 22161 or the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The availability of these test methods will be discussed in detail in the Report and Order deciding this proceeding. Pending the adoption of test procedures, they may be used in the interim for determining compliance. In other words, the methods of measurement in Appendix A will be considered acceptable procedures for testing and determining compliance of a computing device with the technical standards in Subpart J of Part 15.

6. As noted above, we are also proposing to formalize the procedure for verifying compliance of a computing device. Very little was said in the *First Report* about the new verification procedure, since it is in essence a self-certification procedure leaving maximum flexibility to the manufacturer to determine compliance. A definition of verification was added to Section 15.4(r) to give manufacturers and importers guidance in what is required of them to verify compliance. The proposed procedure delineate the responsibility and rights of a person verifying that a device complies with the appropriate FCC Rules, are set forth in Appendix B, attached. The new procedure will be incorporated into Subpart J of Part 2 of FCC Rules.

Procedural Matters

7. Notice of the proposed rule making is hereby given in the above discussed matter. Any interested person may participate in this proceeding by filing comments by July 30, 1980. Reply comments may be filed by August 15, 1980. Comments and reply comments may be addressed to the issues and proposals set forth in this Notice and to other issues as the participants believe are relevant and necessary to the resolution of these matters. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or writing

indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. For further information concerning this Notice, contact Mr. Art Wall, FCC, Office of Science and Technology, Washington, DC 20554, telephone 202-653-8128. However, members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, *ex parte* contacts made to members of the Federal Communications Commission in this proceeding must be disclosed in the public docket file. A summary of the Commission's procedure governing *ex parte* contacts in rulemaking¹ proceedings is available from the Commission's Consumer Assistance Office, FCC, Washington, DC 20554, (202-632-2700).

9. Authority for the proposed amendments is contained in Sections 4(i), 302 and 403 of the Communications Act of 1934, as amended. Pursuant to § 1.415 of the Commission's rules, an original and five (5) copies of all comments, reply comments, and other pleadings and submissions shall be furnished to the Commission. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

Federal Communications Commission,
William J. Tricarico,
Secretary.

Appendix A

- 1.0 Scope
- 2.0 Reference Standards
- 3.0 Definitions
 - 3.1 Ambient Level
 - 3.2 Conducted Radio Noise
 - 3.3 Emission
 - 3.4 Equipment Under Test (EUT)
 - 3.5 Ground Plane
 - 3.6 Line-Impedance Stabilization Network (LISN)
 - 3.7 Low Voltage Computing Device
 - 3.8 Radio Noise
 - 3.9 Radiated Radio Noise
 - 3.10 Random Noise
- 4.0 General Test Conditions
 - 4.1 Test Sites
 - 4.1.1 Open-Field Tests
 - 4.1.1.1 Test at Laboratory, Factory, or User's Premises
 - 4.1.1.2 Testing in a Shielded Enclosure
 - 4.1.2 Testing at User's Installation (On-site testing)

¹ See 63 FCC 2d 804 (1978) where the Commission set forth its interim policy.

- 4.1.3 Individual Equipment Test Requirements
- 4.2 Measurement Instrumentation
 - 4.2.1 Radio-Noise Meter Calibration
 - 4.2.2 Detector-Function Selection and Bandwidth
 - 4.2.3 Units of Measurements
 - 4.2.4 Preliminary testing and Monitoring
- 4.3 Frequency Range to be Scanned
- 4.4 Data-Reporting Format
- 4.5 Equipment Under Test
 - 4.5.1 Operating Conditions
 - 4.5.2 Conditioning of the EUT
 - 4.5.3 Interfacing Units and Simulators
 - 4.5.4 EUT Grounding
 - 4.5.5 EUT leads-Use of Indicating Instruments
- 4.6 Test Environment
 - 4.6.1 Ambient Radio-Noise and Signals
 - 4.6.2 Temperature
- 4.7 Arrangement of EUT
- 4.8 Ground Plane
 - 4.8.1 Testing of User's Installation (On-site Testing)
- 5.0 Conducted Powerline Measurements
 - 5.1 Conducted Powerline Test Configuration
 - 5.2 Line Probe
 - 5.3 Line-Impedance Stabilization Network
 - 5.4 Grounding
 - 5.5 Measurement Procedure
 - 5.5.1 EUT Power Leads
 - 5.5.2 Shielded Power Leads
 - 5.6 Testing of User's Installation (On-site Testing)
- 6.0 Radiated Emission Measurements
 - 6.1 Determination of Test Radial
 - 6.2 Radiated Radio-Noise Tests
 - 6.2.1 Electromagnetic Field: 30 MHz to a GHz
 - 6.3 Testing of User's Installation (On-site Testing)

1.0 Scope

This standard sets forth uniform methods of measurement of radio noise emitted from computing devices as defined in Part 15 of FCC Rules. The technical standards for computing devices are set forth in Subpart J of Part 15 of FCC Rules (47 CFR 15-J). Methods for the measurement of radiated and powerline conducted radio noise are covered herein. These methods of measurement apply to the testing of individual components, units or systems comprised of components and units.

2.0 Reference Standard

The following shall form a part of this standard: American National Standard Specifications for Electromagnetic-Interference and Field-Strength Instrumentation, 10 kHz to 1 GHz, ANSI 63.2 (1980).

3.0 Definitions

The definitions in Parts 2 and 15 of FCC Rules and the following shall apply specifically to use of this standard.

3.1 Ambient Level

The magnitude of radiated or conducted signals and noise existing at a specific test location and time.

3.2 Conducted Radio Noise

Radio noise propagated along wires.

3.3 Emission

Electromagnetic energy produced by a device which is radiated into space or conducted along wires and is capable of being measured.

3.4 Equipment Under Test (EUT)

The representative unit of a system or component of a system being tested or evaluated.

3.5 Ground Plane

A conducting surface used to provide uniform reflection of an impinging electromagnetic wave. Also, the common reference point for electrical potentials.

3.6 Line-Impedance Stabilization Network (LISN)

A network inserted in the supply-mains lead of the EUT that provides a specified measuring impedance for radio-noise voltage measurements and isolates the EUT and the measuring equipment from the supply mains at radio frequencies.

3.7 Low Voltage Computing Device

Computing device with operating input voltages of up to 600 volts dc and rms ac.

3.8 Radio Noise

An electromagnetic noise in the radio frequency range that may be superimposed upon a wanted signal.

3.9 Radiated Radio Noise

Radio noise energy in the form of an electromagnetic field including both the radiation and induction components of the field.

3.10 Random Noise

Electromagnetic disturbance (noise) originating in a large number of discrete disturbances with random occurrences in time and in amplitude.

Note.—The part of the noise that is unpredictable except in a statistical sense. The term is most frequently applied to the limiting case where the number of transient disturbances per unit time is large, so that the spectral characteristics are the same as those of thermal noise (thermal noise and shot noise are special cases of random noise).

4.01 General Test Conditions

4.1 Test Sites

An environment is required which assures valid, repeatable measurement results. A measurement is valid to the extent that it is a true representation of the characteristic being measured, and when the same measurement procedure yields repeatable results. For testing representative samples of an equipment type, testing is normally conducted in an open field (see 4.1.1). Other alternatives are permitted, provided they have received prior approval from the FCC. (See 4.1.1.1 and 4.1.1.2) For equipment which can only be tested in its place of use, and the conditions of 4.1.1.1 cannot be satisfied, then the conditions of 4.1.2 shall apply. A description of the test facility used for testing computing devices subject to certification shall be filed with the Commission, pursuant to Section 15.38 of the FCC Rules (47 CFR 15.38).

4.1.1 Open-Field Tests

Radiated measurements shall be made in an open, flat area characteristic of cleared, level terrain. Such test sites shall be void of buildings, electric lines, fences, trees, etc., and free from underground cables, pipelines, etc., except as required to supply and operate the EUT. The ambient radio-noise levels and other undesired signals shall conform to the requirements of 4.6.1. A suggested layout of an open-field test site is shown in Figure 1, where the distance d can be 3 meters, 10 meters, or 30 meters and where all reflecting objects lie outside the perimeter of the ellipse.

Note.—A metal fence or large reflecting object shall be sufficiently far from the elliptical boundary so as not to introduce additional unknown factors.

If the EUT occupies a volume of less than a meter cube, tests should preferably be made at a 3 meter site. The distance from the EUT and measuring antenna shall be measured from the closest point of any part of the device or system.

Note.—The suitability of a test site has been addressed in the Notice of Proposed Rule Making in FCC Docket No. 21371, 44 FR 45342, September 6, 1977.

4.1.1.1 Tests at Laboratory, Factory, or User's Premises

Compliance with the FCC limits for radio frequency devices shall be based on tests being made in open field test site, or equivalent, unless measurements are made at the user's premises for a unique installation per Section 4.1.2. Where it can be shown that the test results made in a laboratory, factory,

user's premises, anechoic rooms, dedicated factory site or other facility are correlateable to those made in an open field test site, such test results will be considered acceptable. Sufficient tests over the entire frequency range of 30 to 1000 MHz shall be made to demonstrate that the alternative site produces results that correlate with the results of tests made in an open field.

4.1.1.2 Testing in a Shielded Enclosure

Radiated measurements made in a shielded enclosure are suitable only for determining the frequency characteristics of an EUT; they are not suitable for determining the actual level of the emission, unless it can be shown that the results of test made in the enclosure is correlateable to those made in an open field, or equivalent site. Conducted radio noise measurements made in a shielded enclosure are acceptable and, in fact, are preferable.

4.1.2 Testing at User's Installation (On-Site Testing)

Testing is permitted at the end user's premises, when the conditions of 4.1.1 or 4.1.1.1 cannot be satisfied. In this case, both the equipment and test premises in combination are considered the EUT. The radiated-emission results are unique to the installation site because site containment properties affect the measurement. The conducted emanation results may also be unique to the installation. See also 6.3.

4.1.3 Individual-Equipment Test Requirements

In some cases, it may be necessary to develop a set of explicit requirements specifying the test conditions, EUT operation, etc. to be used in testing a specific EUT or specific class of EUT's for radio noise emissions. Such requirements shall be documented in the report of measurements for the EUT and should take precedence over the requirements of this standard, provided the modified procedure is acceptable to the Commission.

4.2 Measuring Instrumentation

Radiated and conducted measurements shall be made with a Spectrum Analyzer of sufficient sensitivity and quality to insure accurate, repeatable measurements of all emissions over the specified frequency range. Alternatively, a radio noise meter may be used provided it conforms to the *American National Standard Specifications for Electromagnetic Interference and Field Strength Instrumentation 10 kHz to 1 GHz*, C63.2 (1980). Other instruments may be used for certain restricted and

specialized measurements when correlation data have been taken to establish methods of conversion data to that achieved with C63.2 instrumentation.

4.2.1 Measuring Instrument Calibration

The calibration of the measuring instrument shall be checked frequently enough to assure its accuracy. Adjustments shall be made and correction factors applied in accordance with instructions contained in the manual for the measuring instrument.

4.2.2 Detector-Function Selection and Bandwidth

For radio noise meters or spectrum analyzers which include weighting circuits, the detector function shall be set to peak or alternatively to the CISPR quasis-peak function. The bandwidth of the measuring instrument shall not be less than 100 kHz for field strength measurements over the frequency range of 30 to 1000 MHz and not less than 9 kHz for conducted voltage measurements over the frequency range of 450 kHz to 30 MHz. Post detector video filters shall not be used.

4.2.3 Units of Measurements

Measurements of radiated interference shall be reported in terms of microvolts per meter at a specified distance. The indicated readings on the spectrum analyzer or the radio-noise meter shall be converted to microvolts per meter by use of appropriate conversion factors. The signal level is considered to be the rms level of an unmodulated sine wave signal which produces a response corresponding to the peak of the emission observed on the measuring instrument (i.e., substitution method shall be used). Measurements of conducted interference shall be reported in terms of microvolts.

4.2.4 Antennas

A calibrated, tuned, half-wavelength dipole antenna shall be used for measuring the level of radiated emissions. Other linearly polarized antennas are acceptable provided the results obtained with such antennas are correlatable to levels obtained with a tuned dipole. The antenna shall be capable of measuring both horizontal and vertical polarizations. For 3 meter test sites, the height of the antenna shall be capable of being varied from 1 to 4 meters. For 10 and 30 meter test sites, the antenna shall be capable of being varied from 1 to 7 meters.

4.2.5 Preliminary Testing and Monitoring

Preliminary radiated measurements should be made inside, preferably in an enclosure, at a closer distance than specified for compliance to determine the emission characteristics of the EUT. If a spectrum analyzer is not used, radio-noise measurements should be monitored using either a headset or loudspeaker as an aid in detecting ambient signals and selecting problem frequencies. Precautions shall be taken to ascertain that the use of a headset or speaker does not affect the radio-noise meter indication during testing.

4.3 Frequency Range To Be Scanned

For radiated measurements, the frequency range from 30 MHz to 1000 MHz shall be searched and all emissions from the EUT that are within 20 dB of the appropriate limit shall be measured and reported. For conducted measurements, the frequency range of 450 kHz to 30 MHz shall be searched and all emissions from the EUT that are within 20 dB of the appropriate limit shall be measured and reported. To facilitate testing with a radio noise meter, the frequency range covered in the particular test should be scanned while monitoring with a headset or speaker. If any indicated peaks appear while scanning, readings shall be taken at the frequencies where they occur. The scan rate shall be such that noise signals above radio-noise meter sensitivity are not omitted from detection.

Note.—Automatic scan techniques are acceptable but the maximum scan speed is limited by the response time of the measurement system and the repetition rate of the radio noise to be measured.

4.4 Data-Reporting Format

The measurement results expressed in accordance with 4.2.3, and specific limits where applicable, shall be presented in tabular and/or graphical forms showing level vs frequency. Since alternate methods are provided, test data must identify the methods used. Instrumentation, instrument and bandwidth settings, detector function, EUT arrangements, sample calculation with all conversion factors and all other pertinent details shall be included along with the measurement results.

4.5 Equipment Under Test

The equipment under test (EUT) shall be configured and operated in a manner which tends to maximize its emission characteristics in a typical application. Power and signal distribution, grounding, interconnecting cabling and physical placement of equipment or equipments of a test system, shall

simulate the typical application and usage in so far as practicable. The EUT shall be furnished with rated (nominal) voltage as specified in the individual-equipment power requirements. The power supplied to the EUT shall be filtered to meet the requirements of 4.6.1.

4.5.1 Operating Conditions

The EUT shall be operated at the specified load conditions (mechanical and/or electrical) for which it is designed. Loads may be actual or simulated as described in the individual-equipment requirements.

4.5.2 Conditioning of the EUT

The EUT shall be operated for a sufficient period of time to approximate normal operating conditions. The warm-up time shall be reported along with the measurement results.

4.5.3 Interfacing Units and Simulators

In case the EUT is required to interact functionally with other units, either the actual interfacing units or simulators may be used to provide representative operating conditions, provided the effects of the simulator can be isolated or identified. It is important that any simulator used in lieu of an actual interfacing unit properly represent the electrical, and in some cases the mechanical, characteristics of the interfacing unit, especially concerning RF signals and impedances.

4.5.4 EUT Grounding

The EUT shall be grounded in accordance with the manufacturer's requirements and conditions of intended use. If the EUT is operated without a ground connection, it shall be tested ungrounded. When the EUT is furnished with a grounded terminal or internally-grounded lead, and when this terminal or lead is used in actual installation conditions, the ground lead or connection shall be connected to a ground plane, simulating actual installation conditions. Any internally-grounded lead included in the plug end of the line cord or the EUT shall be connected to ground through the utility power service (see also 5.1 and 5.4).

4.5.5 EUT Leads-Use of Indicating Instruments

During the time radio-noise measurements are being made, no external electrical meter or electrical indicating device shall be in the input or output circuits of the test sample, except those normally used with the measuring equipment.

4.6 Test Environment

The environment at the test site should satisfy the following conditions:

4.6.1 Ambient Radio-Noise and Signals

It is desirable that the conducted and radiated ambient radio-noise and signal levels, measured at the test site with the test sample de-energized, be at least 6 dB below the allowable limit of the applicable specification or standard. However, in the event that the measured levels of ambient plus EUT radio noise emissions are not above the applicable limit, the EUT shall be considered to be in accordance with the limit.

If the ambient field at the specified distance, or the powerline ambient level is too high, the following methods may be used to show EUT compliance:

- Perform measurements at closer than the specified distances and extrapolate the result to the specified limit using an inverse distance linear attenuation factor. See 6.2.
- Insert line filters between the power source and the line-impedance stabilization network (LISN) or between the power source and the EUT as appropriate for the particular measurement.
- Perform measurements of critical frequency bands during off hours when broadcast stations may be off the air and industrial ambients are lower.
- Resort to measurement in an enclosure or anechoic room (see 4.1.1.1 or 4.1.1.2 for conditions of use). Measurements made in a shielded (metal) enclosure are normally not acceptable for the purpose of determining compliance.

4.6.2 Temperature

The ambient temperature of the testing location should preferably be within the range of 10 to 40 degrees C (50 to 104 degrees F) unless the individual equipment requirements specify testing over a wider temperature range. Measurements made in temperatures outside these limits may be accepted, provided the EUT, radio-noise meters, all indicating devices, and equipment are at the testing location sufficiently long so that their temperatures become stabilized with respect to the temperature of the testing location. Evidence shall be given so that the calibrations of the measuring instruments used are accurate for the temperatures at which they are used.

4.7 Arrangements of EUT

The EUT shall be arranged to the extent practical in a manner which simulates actual use. An EUT which is normally operated on a table shall be placed upon a non-conducting table

having the approximate dimensions of 0.75 meters by 1 meter and a height of 1 meter above ground. For ease of testing, the table may be placed on a rotatable non-conducting platform in which case the total height of the table plus platform shall be approximately 1 meter from the ground. (See Section 4.8 re ground plane)

For an EUT normally operated on the floor, the equipment should, if practical, be placed on a non-conducting rotatable platform with a height of not more than 0.45 meters above the ground. The EUT shall be located in the center of the platform. If the EUT consists of two or more modules (boxes), the boxes shall be arranged in a manner which simulates the actual use. In the event that all the components of an EUT system will not fit on the platform, one or more of the components may be placed on non-conductive shelves located below the table top, using the minimum spacing necessary for their placement. The components on the lower shelves should be centered on the axis of rotation of the test platform.

Power and signal distribution, grounding, interconnecting cable and physical placement of the components should simulate as near as possible typical application and use. Since the radiation from an EUT consisting of two or more components may be dependent upon the way the components, remote controls and interconnecting cables are physically arranged on the table or platform, a sufficient number of arrangements shall be investigated to insure that the maximum radiation is measured.

The distance between the measuring set antenna and the closest point of EUT shall be 3, 10, or 30 meters, whichever is appropriate.

Note.—For a Class B computing device, the test distance is 3 meters; for a Class A computing device the limit is specified at 30 meters. Radiated measurements may be made at a closer distance provided the results are extrapolated to 30 meters using the inverse distance linear relationship. (See 6.3.) For an EUT which cannot be rotated, measurements shall be made at as many points around the equipment as are necessary to determine the direction of each maximum radiated emission.

For an EUT located at the user's premise, measurements should be made at the appropriate limit distance measured from the boundary defined by an imaginary straight line periphery describing a simple geometric boundary that encompasses all EUT components, or in some cases outside the room if the room is dedicated for the equipment. All EUT components and interconnecting cabling should be within this boundary.

Where measurements at the greater limit distance (say 30 meters) are impractical, measurements may be made at lesser distances (say 3 or 10 meters) and extrapolated according to the inverse distance relationship. If EUT isolation is necessary, it shall be separated from the ground plane by approximately 0.3 cm of electrical insulating material.

4.8 Ground Plane

A ground screen having a minimum width of seven meters and a minimum length that extends one meter beyond the furthestmost vertical projection of the EUT and the field strength indicator search antenna shall be used on the 3 meter and 10 meter standard test site. A ¼" galvanized mesh (sometimes called hardware cloth) is considered suitable for the purpose. Although preferable, the ground screen is optional for the 30 meter standard test site. For safety purposes, the ground plane shall be properly bonded to earth through building or utility ground.

4.8.1 Testing at User's Installation (On-Site Testing)

A ground plane need not be installed for testing at a user's installation unless it is to be a permanent part of the installation. If a ground plane is used, it shall be bonded to the utility ground as specified in 4.8.

5.0 Conducted Powerline Measurements

Unless otherwise specified, measurements shall be made to determine the line-to-ground radio-noise voltage which is conducted from the EUT power-input terminals that are directly connected to a public power network.

The measurements are to be made with the EUT connected to a nominal, standardized RF impedance which is to be provided by a line-impedance stabilization network (see 5.1). The network must be inserted in series with each current-carrying conductor in the EUT power cord.

5.1 Conducted Powerline Test Configuration

The EUT shall be placed 40 centimeters from an earthed conducting surface of at least 2 meters square unless it is floor-standing and shall be kept at least 80 centimeters from any other earthed conducting surface. If the measurement is made in a shielded enclosure, the distance of 40 centimeters may be referred to one of the walls of the enclosure.

If the EUT is supplied without a flexible power lead, it shall be placed at

a distance of 80 centimeters from the LISN (or mains outlet where a LISN cannot be used) and connected thereto by a lead of length not greater than 1 meter.

If the EUT is supplied with a flexible lead, the voltage or current shall be measured at the plug end of the lead. The length of the lead in excess of the 80 centimeters separating the EUT from the LISN (or mains outlet where a LISN cannot be used) shall be folded back and forth so as to form a bundle not exceeding 30 centimeters to 40 centimeters in length.

If the EUT is normally operated with a ground connection, the EUT shall be connected to ground at the LISN through a conductor provided in the flexible lead.

If the EUT is normally operated while held in the hand, measurements shall be made using an artificial hand to stimulate the effects of the user's hand. The artificial hand shall consist of metal foil wrapped round the case, or part thereof, as specified below. The foil shall be connected to one terminal of an RC element consisting of a 200-pF capacitor in series with a 500-ohm resistor; the other terminal of the RC element shall be connected to ground.

Note.—In lieu of the artificial hand, comments are solicited on the adoption of a fixed attenuation factor for a device that will normally be used in the hand.

When the case of the EUT is entirely of metal, no metal foil is needed. The capacitor of the RC element shall be connected directly to the body of the EUT. When the case of the EUT is entirely of insulating material, metal foil shall be wrapped around the handle(s) and also wrapped around the body that the user may contact. All pieces of metal foil shall be connected together and to the capacitor terminal of the RC element. When the case of the EUT is partly metal and partly insulating material, and has insulating handles, metal foil shall be wrapped around the handles and on the non-metallic part of the body; the metal foils around the handles and the metal foil on the body shall be connected together and to the capacitor terminal of the RC element.

5.2 Line Probe

A line probe may be used for voltage measurements under certain conditions, (see 5.6). If an appropriate LISN which satisfies the impedance requirements of Figure 3, having the current capacity of the EUT is not commercially available, the method shown in Figure 5 may be used. The measurements should be made between each current-carrying conductor in the supply mains and the

ground conductor with a blocking capacitor C and a resistor such that the total resistance between line and ground is 1500 ohms. Since the line probe attenuates the radio-noise voltage, appropriate calibration factors must be added to the measured values. Measurement results with the appropriate LISN shall take precedence over the method shown in Figure 5.

5.3 Line-Impedance Stabilization Network

A line-impedance stabilization network (LISN) having an impedance characteristic within the limits shown in Figure 3 is required for conducted radio-noise measurements. Figure 4 shows a network which will provide the specified impedance over the frequency range 0.15–30 MHz. A coaxial-type connector shall be provided for connection of the measuring instrumentation by means of a 50-ohm cable, or connection of a 50-ohm terminating resistance across the 1000-ohm resistor. Provisions shall be made for bonding the LISN enclosure to the ground plane used, (see 4.8). If a direct bond is not possible, for instance with concrete floors, a metal sheet 2 meters square shall be placed under the LISN and bonded to the LISN by a short low impedance connection.

5.4 Grounding

The LISN housing, measuring instrumentation case, ground plane, etc., shall be bonded together in such a manner that they are at the same RF potential.

5.5 Measurement Procedure

Measurements of powerline conducted radio-noise shall be expressed as the voltage developed across the 50-ohm LISN port terminated by a 50-ohm measuring instrument. All voltage measurements shall be made at the plug end of the EUT power cord, e.g. by the use of mating plugs and receptacles on the EUT and LISN.

5.5.1 EUT Power Leads

All EUT input power leads, except ground leads, shall individually be connected through a LISN to the input power source. All unused 50-ohm connectors of the LISN shall be resistively terminated in 50-ohms when not connected to the measuring instrument.

5.5.2 Shielded Power Leads

Equipment normally used with unshielded power leads shall be connected to the LISN and tested with unshielded leads. If the EUT is normally operated with shielded or armored

leads, the tests shall be made using such leads.

5.6 Testing of User's Installation (On-Site Testing)

Testing for powerline conducted radio-noise is permitted at the user's installation site, provided that no disturbance to the normal EUT installation exists, except to make provisions for connection of the 1500-ohm line probe specified in 5.2 and Figure 5. Special precautions must be taken to establish a reference ground for the measurements. No LISN shall be used. The measurements are dependent on the impedance presented by the supply mains and may vary with time and location due to variations in the supply-mains impedance. (It may be necessary to perform repeated measurements over a suitable period of time to determine the variation in measured values. The time period should be sufficient to cover all significant variations due to operating conditions at the installation.) Such measurement results should be regarded as unique to that EUT and installation environment.

6.0 Radiated Emission Measurements

Measurements of radiated radio noise shall be made using the measuring instrumentation and antennae specified in 4.2 and 4.2.4, respectively. Radiation from the EUT including radiation from all signal and power cabling shall be measured. Consistent with Section 4, above, the EUT shall be set up and operated in a manner representative of actual use.

6.1 Determination of Test Radial

Radiated emission magnitudes shall be obtained in the azimuthal direction of maximum field strength for each predominate emission.

It is preferable to rotate the EUT to determine the direction of maximum field strength. A turntable arrangement may be used for convenience.

For large, heavy, and stationary electric equipment not readily rotated, the measuring instrument and test antenna may be moved around the EUT to determine the direction of maximum field strength for each predominate emission.

6.2 Radiated Radio-Noise Tests

Radiated radio noise measurements shall be made at one of the test sites described in 4.1, above. An EUT subject to a radiated limit at 3 meters, shall be measured at a 3 meter test site, unless impractical because of size of equipment, location, etc. Other equipment subject to a limit at 30

meters, may be measured at a closer distance, provided the results are extrapolated using an inverse distance extrapolation factor (i.e., 20dB/decade). For a 3 meter test distance, the antenna shall be varied in height between 1 and 4 meters to determine the maximum level of emissions. For 10 meter and 30 meter test distances, the antenna shall be varied between 1 and 7 meters to locate the maximum level of emission. Both horizontal and vertical orientation of the search antenna shall be employed and maximum values reported.

A typical test configuration for open-field and alternate sites is shown in Figure 2. The LISN, installed for the powerline conducted radio-noise measurements, is preferable for radiated-emission tests.

6.2.1 *Electromagnetic Field: 30 MHz To 1 GHz*

Any equipment or device to which it is applicable shall be measured for radiated emissions from all units, cables, power lines and interconnecting wiring.

Frequency scans of the EUT radio-noise emissions shall be made at a minimum of eight azimuth angles spaced by 45 degrees in characterizing the EUT emanation profile. If directional noise patterns are suspected, additional azimuths shall be examined. Measurement shall be made at the azimuth such that the maximum radiation levels will be detected.

The antenna(s) specified in 4.2.4 above shall be positioned at the specified distance from the EUT for the duration of this test. Tests shall be made in both the horizontal and vertical planes of polarization.

The area of maximum radiation from the EUT may be initially determined by scanning the power leads and the equipment using the radio-noise meter in conjunction with a short electric field antenna at a closer distance.

6.3 *Testing of User's Installation (On-Site Testing)*

Testing of the installed EUT may be performed at the end-user's installation with the results regarded as unique to the EUT and installation environment. If no detailed instructions are given in the individual-equipment requirements, measurements shall be made to locate the radial of maximum emission preferably at the boundary from the user's premises, or, if such boundary is less than 30 meters, at a distance 30 meters from the equipment being tested. Where measurements from the boundary or 30 meter distance from the EUT are impractical, measurements may

be made at lesser distances and extrapolated to the boundary or 30 meter distance from the EUT, whichever is greater. At frequencies below 30 MHz extrapolation from a lesser distance are not recommended unless specific equivalence can be demonstrated. A LISN shall not be used for testing of the user's installation in order that the measured radio-noise voltage be representative of the specific site.

BILLING CODE 6712-01-M

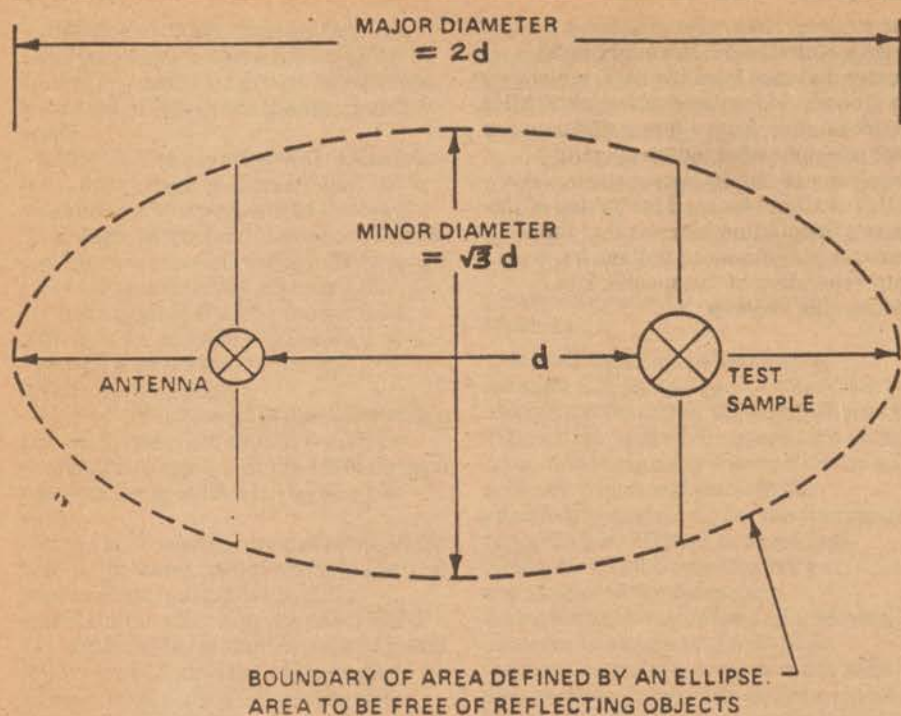


FIGURE 1 OPEN-FIELD TEST SITE

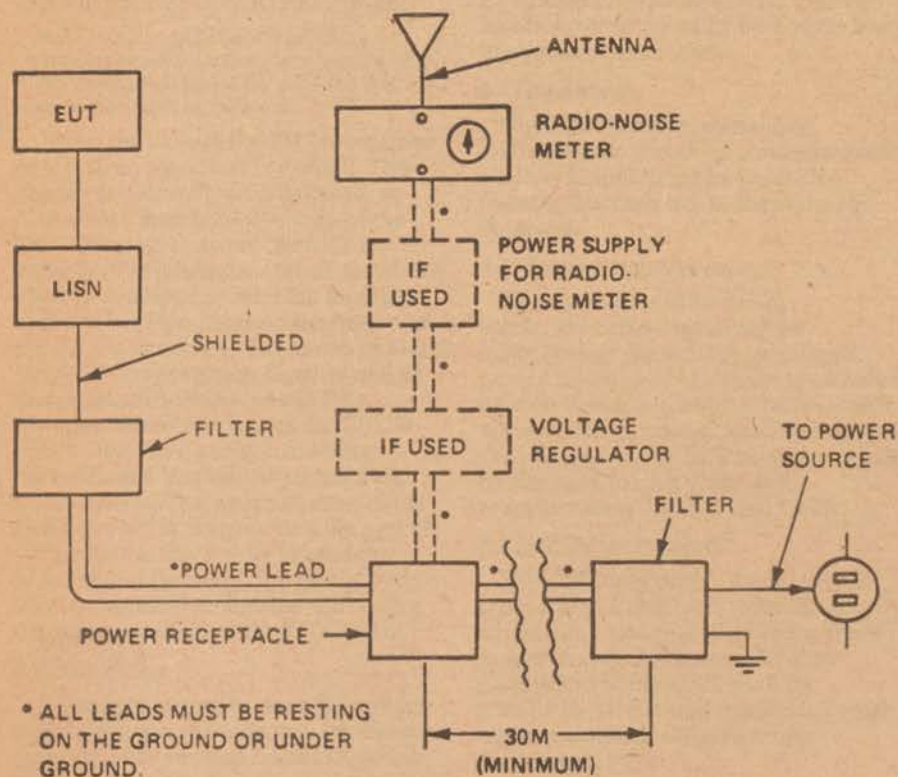
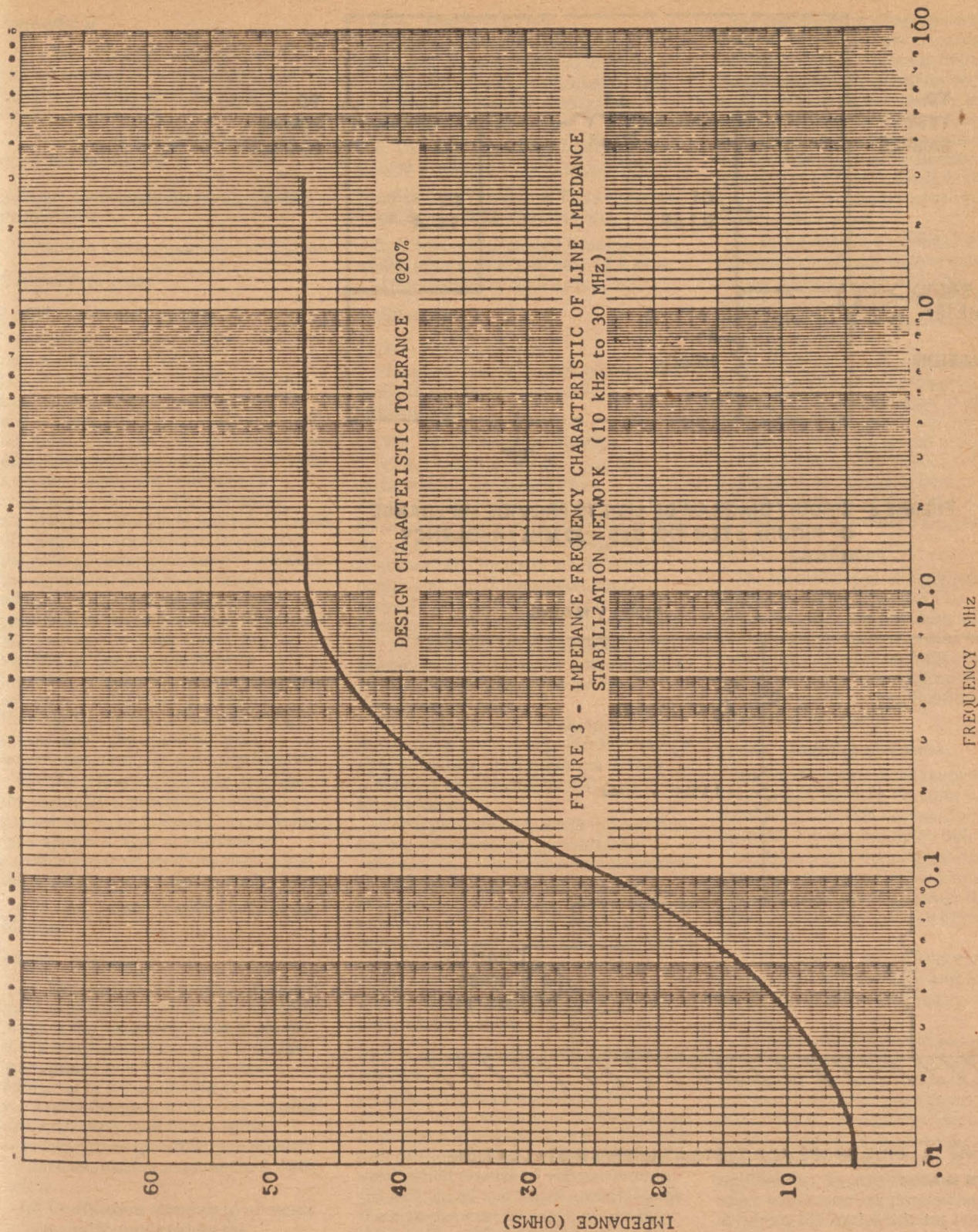


FIGURE 2 SUGGESTED LAYOUT FOR OPEN-FIELD TESTS



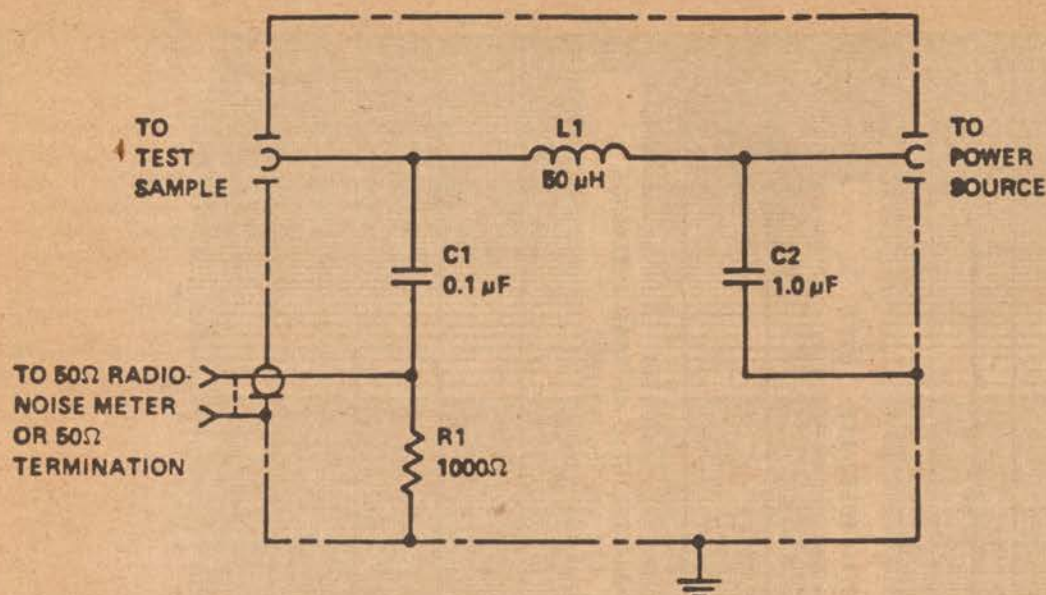


FIGURE 4-CIRCUIT DIAGRAM OF LISN TO PROVIDE IMPEDANCE OF FIGURE 3 FOR THE 0.45 - 30 MHz FREQUENCY RANGE

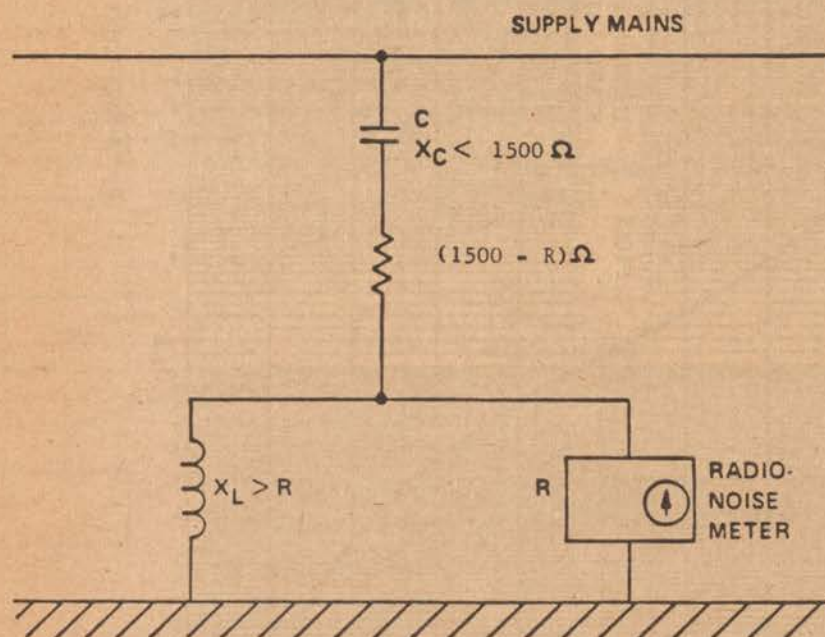


FIGURE 5 LINE PROBE FOR TESTS AT USER'S INSTALLATION

BILLING CODE 6712-01-C

Appendix B

The following items are proposed amendments to Subpart J of Part 2 of Chapter I of Title 47 of the Code of Federal Regulations.

1. The title of Subpart J of Part 2 is amended as follows:

Subpart J—Equipment Authorization Procedures

2. Section 2.901 is amended as follows:

General Provisions**§ 2.901 Basis and purpose.**

(a) In order to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and in order to promote efficient use of the radio spectrum, the Commission has developed technical standards for radio frequency equipment and parts or components thereof. The technical standards applicable to individual types of equipment are found in that part of the rules governing the service wherein the equipment is to be operated. In addition to the technical standards provided, the rules governing the service may require that such equipment be verified by the manufacturer or importer, or that such equipment receive equipment authorization from the Commission by one of the following procedures: type approval, type acceptance, or equipment certification.

(b) The following sections describe the verification procedure and the procedures to be followed in obtaining type approval, type acceptance or certification from the Commission and the conditions attendant to such a grant.

3. A new § 2.902 is added to read as follows:

§ 2.902 Verification.

(a) Verification is a procedure where the manufacturer makes measurements or takes the necessary steps to insure that the equipment complies with the appropriate technical standards. Submittal of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested by the Commission pursuant to § 2.957 below.

(b) Verification attaches to all items subsequently marketed by the manufacturer or importer which are identical as defined in § 2.908 to the sample tested and found acceptable by the manufacturer.

4. Section 2.908 is amended to read as follows:

§ 2.908 Identical defined.

As used in this subpart, the term "identical" means identical within the variation that can be expected to arise as a result of quantity production techniques.

5. The undesignated subheading after § 2.908 is revised to read as follows:

Application Procedures: Type Approval, Type Acceptance, Certification

6. A new undesignated heading is added after § 2.947 and new §§ 2.951–2.957 are added to read as follows:

Verification**§ 2.951 Cross reference.**

The provisions of § 2.901, et seq., shall apply to equipment subject to verification.

§ 2.952 Limitation on verification.

(a) Verification signifies that the manufacturer or importer has determined that the equipment has been shown to be capable of compliance with the applicable technical standards if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. Compliance with these standards shall not be construed to be a finding by the manufacturer or importer with respect to matters not encompassed by the Commission's rules.

(b) Verification of the equipment by the manufacturer or importer is effective until revoked or a termination date is otherwise established by the Commission.

(c) No person shall, in any advertising matter, brochure, etc., use or make reference to a verification in a deceptive or misleading manner or convey the impression that such verification reflects more than a determination by the manufacturer or importer that the device or product has been shown to be capable of compliance with the applicable technical standards of the Commission's rules.

§ 2.953 Responsibility of manufacturer or importer.

(a) In verifying compliance, the manufacturer or importer (in the case of imported equipment) warrants that each unit of equipment marketed under the verification procedure will conform to the unit tested and found acceptable by the manufacturer or importer and that data on file with the manufacturer or importer continues to be representative of the equipment being produced under such verification within the variation that can be expected due to quantity production and testing on a statistical basis.

(b) The importer of equipment subject to verification may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards may rely on the manufacturer or independent testing agency to verify compliance. The test records required by Section 2.955 however should be in English and made available to the Commission upon a reasonable request.

(c) In the case of transfer of control of equipment, as in the case of sale or merger of the grantee, the new manufacturer or importer shall bear the responsibility of continued compliance of the equipment.

(d) Modification of equipment verified by the manufacturer or importer shall be retested if the modification or change in the opinion of the manufacturer may adversely affect the tested results of the modified equipment. The manufacturer or importer continues to bear the responsibility for continued compliance of subsequently produced equipment.

§ 2.954 Identification.

The identification of equipment subject to verification shall be consistent with current manufacturer or marketing practices, provided he maintains adequate identification and records for each unit verified to facilitate positive identification of each equipment marketed.

§ 2.955 Retention of records.

(a) For each equipment subject to verification, the manufacturer or importer (in certain cases) shall maintain the records listed below:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the requirements of § 2.953.

(2) A record of the procedures used for production inspection and testing to insure the conformance required by § 2.953.

(b) The records listed in paragraph (a) of this section shall be retained for two years after the manufacture of said equipment item has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the manufacturer or importer is officially notified that an investigation or any other administrative proceeding involving his equipment has been instituted.

§ 2.956 FCC inspection and submission of equipment for testing.

(a) Each manufacturer or importer of equipment subject to verification shall upon receipt of reasonable request

submit to the Commission the records required by § 2.955.

(b) The Commission may require the manufacturer or importer of equipment subject to verification to submit one or more of sample units for measurements at the Commission's Laboratory.

(c) In the event the manufacturer believes that shipment of the sample to the Commission's laboratory is impractical because of the size or weight of the equipment, or the power requirement or for any other reason, the applicant may submit a written explanation why such shipment is impractical and should not be required.

§ 2.957 Sampling tests of equipment compliance.

The Commission will, from time to time, request the manufacturer or importer to submit various equipment(s) for which verification has been made, to determine the extent to which subsequently produced units continue to comply with the applicable standards. Shipping costs to the Commission's laboratory and return shall be borne by the manufacturer or importer.

[FR Doc. 80-18743 Filed 6-23-80; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 45, No. 123

Tuesday, June 24, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Policy Relating to the Performance of Uncompleted Timber Sale Contracts by Third Party

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy.

SUMMARY: This proposal would revise agency policy relating to the completion of timber sale contracts by qualified third parties. The primary purpose of the revision will be to ensure that speculation in National Forest timber sales will not occur and to clarify when completion of timber sale contracts by third parties will be approved.

DATES: Comments must be received by August 25, 1980.

ADDRESSES: Send written comments to: R. Max Peterson, Chief, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, (202) 447-4051.

All written submissions made pursuant to this notice will be available for public inspection in the office of the Timber Management Staff, Room 3207, South Agriculture Building, 12th and Independence Avenue, S.W., Washington, D.C., during regular business hours.

It is proposed to revise Forest Service Manual (FSM 2433.34) procedures to read as follows:

2433.34—Performance of Uncompleted Contract by Third Party. Speculation in National Forest timber sales will not be permitted. Purchasers are expected to complete contracts in accordance with their terms. There is specific legislation which generally prohibits the transfer of Government contracts without written approval by the Government. (Rev. Stat.

3737; 41 U.S.C. 15). See also Comptroller General Decision A-28090 (9 Comp. Gen. 72) and B-111876 (32 Comp. Gen. 227). When assignment of a contract is permitted, the original purchaser is not relieved of responsibility.

Department of Agriculture Regulation 36 CFR 223.8(e) provides that the contracting officer may approve third-party agreements so long as they are subject to such conditions as are necessary to protect the public interest. Third-party agreements which are primarily for the convenience of purchasers shall not be approved.

1. *When Agreement between Purchaser and Third Party May be Considered.* Third-party agreements may be considered when:

a. The purchaser loses or disposes of all or a portion of its operations in an area and can no longer process the timber as contemplated at time of purchase; or

b. The purchaser provides evidence that because of a change in his financial circumstances since the time of purchase he cannot now successfully complete the contract. In such circumstances, the party involved would probably be ineligible for award of other sales until new evidence of ability to meet financial requirements was verified; or

c. The purchaser becomes unable to complete the contract; and operation of the sale by a third party is requested by Surety as a means of mitigating liability; or

d. The approving officer determines that such approval will expedite the removal of timber in urgent need of harvest.

2. *Acceptance of a Third Party.* When an application is received for an agreement between the purchaser and a third party for operation of an uncompleted timber sale contract by said third party, and the above conditions have been met, certain other determinations must be made. There must be affirmative documented answers to the following considerations:

a. Recognition of the third party will be consistent with the policy expressed in FSM 2433.34 and protect the interest of the United States.

b. All contractual obligations are complete to date or the third party specifically agrees to complete such obligations.

c. The third party is acceptable as a purchaser of National Forest timber, i.e., the third party would have been eligible for award had they been the high bidder at the time the sale was sold.

d. If the timber was set-aside for small business, the third party has certified its status as a small business. If the purchaser had elected construction of specified roads under section 14(i) of the National Forest Management Act, the third party has certified its status as a small business. Such contracts may be assumed by a large business successor in interest to the purchaser's entire business, when the successor agrees to assume all obligations, including those related to manufacture of timber subject to preferential award. (FSM 2433.33).

e. The proposed action will give both the original purchaser and the third party an opportunity to utilize effective purchaser credit, in manner compatible with the intent of 36 CFR 223.3 paragraph (m). The original purchaser and the third party must be in agreement on the disposition of effective purchaser credit. The approving officer shall be assured that the third party has the financial ability to operate the sale; cash needs may be greater due to the transfer of purchaser credit.

3. *When Agreement between Purchaser and Third Party May Not be Considered.* Approval of performance by a third party will be withheld when the purchaser remains active in the timber industry in the area within economic haul distance from the sale area or when the above considerations for acceptance are not met.

4. *Procedure for Processing Third Party Agreements.* The assignment to a third party of an uncompleted timber sale contract does not relieve the original purchaser of liability to the United States for the performance thereunder. The original purchaser will be notified when a third-party agreement has been approved, but no statement will be made that he is relieved of responsibility. This is analogous to the action taken in notifying a Surety that a sale is closed (FSM 2432.49, item 4). The officer who approved the sale originally, a successor, or superior officer may approve a third-party agreement for an uncompleted timber sale contract, subject to prior clearance by the filed office of the General Counsel except as noted in FSM 2433.36.

When third-party operation is proposed, the contracts shall be examined and needed modifications shall be made. Modifications are not limited to those listed in contract provision B8.32, form FS 2400-5, and B8.31, form FS 2400-6. The intent of such modifications is to update contract provisions to those currently in general use by the Forest Service and to make essential changes to prevent unacceptable resource damage. The rates to be paid by the third party may be changed through rate redetermination if such action is justified by the modifications. Modifications of a simple character may be attached as stipulations to the form of acceptance and made a part thereof. If extensive modifications are necessary, the preferred method is to attach an entirely new contract to the application for modification, making it a part thereof (FSM 2433.25).

Signature and approval of form FS 2400-12 is sufficient in most cases to allow operation of the contract by a third party. It combines in one document (1) the agreement between the purchaser and the third party under which the third party agrees to complete timber sale contract, and (2) recognition and approval of such agreement by the Forest Service. If the purchaser and the third party desire to furnish the agreement between them in a form other than that given on form FS 2400-12, the other form shall be satisfactory to the Forest Service (FSM 2433.36).

An alternative to a qualifying third-party agreement for performance of an uncompleted contract is signing a new contract by the third party. This contract shall include all of the uncompleted requirements of the previous contract plus any needed modifications which are not against the interests of the United States. This should be followed immediately by cancellation of the original contract (FSM 2433.74). This procedure should not be used when:

- a. The sale will be complete within 1 year.
- b. The third party is an individual, partnership, or corporate entity substantially or wholly controlled by the purchaser.
- c. The value of the remaining timber is less than \$10,000 and no competition exists for the remaining timber (36 CFR 223.5(a)).

5. *Application by Subsequent Party.* When an application is received for operation of an uncompleted timber sale contract by a fourth or subsequent party, the same consideration will be given it as are given to third party applications. All actions involving operation of uncompleted contracts by

fourth party will be on form FS 2400-12, except for the following changes:

- a. The agreement will be changed to read: "The purchaser and previous third party shall not by reason of the requested recognition and approval be released from any obligations to the United States of America under the aforesaid timber sale contract."
- b. In part 2b of the agreement the words "and previous third party" will be added after "purchaser."
- c. Space should be provided for signature of previous third party, its witnesses, and date.

R. Max Peterson,
Chief.

June 16, 1980.

[FR Doc. 80-18927 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Allegheny Electric Cooperative; Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of \$165,000,000 to Allegheny Electric Cooperative, Inc., of Harrisburg, Pennsylvania. These loans funds will be used to finance nuclear fuel reload costs and increased costs of construction associated with the previous REA loan guarantee for the purchase of a 10 percent undivided ownership interest in the Pennsylvania Power and Light Company's Susquehanna Steam Electric Station Units No. 1 and 2, each unit having a nameplate rating of 1,100,000 kilowatts.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. William F. Matson, Manager, Allegheny Electric Cooperative, Inc., P.O. Box 1266, Harrisburg, Pennsylvania 17108.

In order to be considered, proposals must be submitted on or before July 24, 1980 to Mr. Matson. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Allegheny

Electric Cooperative, Inc., and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C. this 17th day of June, 1980.

Robert W. Feragen,
Administrator, Rural Electrification
Administration.

[FR Doc. 80-18928 Filed 6-23-80; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

[Docket No. 32660, Agreement C.A.B. 28236, R-1 and R-2, Agreement C.A.B. 28249, R-1 and R-2, Agreement C.A.B. 28250, Order 80-6-110]

International Air Transport Association; Order Relating to Currency and Passenger Fares

Agreements adopted by the Tariff Coordinating Conferences of the International Air Transport Association relating to currency and passenger fares.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 17th day of June 1980.

Agreements between various members of the International Air Transport Association (IATA) have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations. The agreements were adopted by mail vote.

Agreement C.A.B. 28236 increases most passenger fares, except those agreed in Japanese yen, between the United States and Japan by 2 percent and adopts a negative 2 percent currency adjustment factor on oneway normal fare tickets from Japan to the United States as well as to other points in the Western Hemisphere.¹ Agreement C.A.B. 28249 reintroduces Japanese yen currency adjustment factors on roundtrip normal fare tickets for travel originating in Japan and destined to points in TC3 (Asia/Australasia/Pacific). Finally, Agreement C.A.B. 28250 changes the maximum validity of US-Japan APEX fares from the current 45 day period to a longer 60 day period in

¹ The proposed 2 percent increase is in addition to the 10 percent US-Japan fare increase approved with conditions in Order 80-4-138, April 17, 1980.

order to more effectively meet market requirements.

We will approve the extension of the APEX fare validity and the 2 percent general fare increase. Our approval of the general fare increase, however, will be subject to the same conditions set forth in several recent orders,² namely: (1) each IATA carrier, in filing tariffs implementing the agreement, shall file normal economy fares (NEF's) for each city-pair market in which it provides direct service at levels no higher than the applicable Standard Foreign Fare Level prevailing at the time of filing, and (2) in so doing, each IATA carrier must also submit, for comparative purposes, its NEF levels in effect on October 1, 1979, for each market as well as the percentage change over such levels contemplated by its filing.

However, we will not approve for U.S. points reintroduction of the Japanese yen currency factors for TC3 or application of the new adjustment factor on normal one way fares from Japan to the Western Hemisphere. With regard to the Japan-TC3 adjustment factors, Order 80-3-127, March 20, 1980 and earlier orders disapproved their application to Guam and American Samoa on the general grounds that these factors would have been used not to redress currency imbalances, but to obtain selective reductions in published fares for a favored segment of the market.³ We see no reason to reverse this policy and they will be disapproved.

Turning to the new 2 percent negative adjustment factor on Japan-originating one way normal fares, IATA has indicated that the main reason for this is to nullify the effect of the 2 percent general increase on these fares. We believe that this is being done primarily to reestablish long-standing differentials between Japan-originating round trip and one way normal fares to points in the Western Hemisphere. Last year IATA sought our approval for a currency adjustment factor which would have provided for a 15 percent discount on such Japan-originating round-trip normal fares. This was disapproved for the reasons summarized above in relation to Guam and American Samoa. Since then we have consistently disapproved its application whenever it has come up for extension or change, most recently in Order 80-4-200, April 25, 1980, where we disapproved a proposed 2 percent increase in the discount. In these circumstances, we see no reason to approve the proposed 2

percent adjustment factor for Japan-originating one way normal fares and that portion of the agreement will be disapproved.

Acting under the Federal Aviation Act of 1958, as amended, and particularly sections 102, 204(a) and 412 and 414:

1. We do not find the following resolution, incorporated in the agreement indicated, is adverse to the public interest or in violation of the act:

Agreement C.A.B.	IATA Resolution
28250.....	PTC31 (Mail 443) 0719g (Japan-U.S.A./Canada).

2. We do not find the following resolution, incorporated in the agreement indicated, is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions imposed herein:

(a) Normal economy fares for direct service points filed by each IATA carrier in tariffs with the Board pursuant to the following resolution shall not exceed the maximum levels permitted by the Standard Foreign Fare Level in effect at the time of filing; and

(b) Each IATA carrier must submit, at the time of tariff filing and for comparative purposes, its normal economy fares in effect on October 1, 1979, for each city-pair market for which it files revised normal economy fares as well as the percentage by which its proposed normal economy fare levels exceed these October 1, 1979, levels.

Agreement C.A.B.	IATA Resolution
28236	

R-1..... PTC31 (Mail 435)003j.

3. We do not find that the following resolutions, incorporated in the agreement indicated, are adverse to the public interest or in violation of the Act, provided that approval is subject, where applicable, to conditions previously imposed by the Board:

Agreement C.A.B.	IATA Resolution
28249	

R-1..... PTC3 (Mail 444)022v (Except insofar as it would apply on fares to Guam).

R-2..... PTC3 (Mail 444)022z (Except insofar as it would apply on fares to American Samoa).

4. We find the following resolutions, incorporated in the agreements indicated, are adverse to the public interest and in violation of the Act:

Agreement C.A.B.	IATA Resolution
28236	

R-2..... PTC31 (Mail 435)022e.

Agreement C.A.B.	IATA Resolution
28249	

R-1 PTC3 (Mail 444)022v (Insofar as it would apply on fares to Guam).

R-2 PTC3 (Mail 444)022z (Insofar as it would apply on fares to American Samoa).

5. We have decided that the public interest requires a grant of antitrust immunity to Agreement C.A.B. 28250, set forth in finding paragraph 1 above, and to those portions of Agreements C.A.B. 28236 and C.A.B. 28249, as set forth and conditioned in finding paragraphs 2 and 3 above. These agreements are a product of the IATA conference machinery tentatively approved and immunized for a period of at least two years in Order 80-4-113, April 15, 1980. In Docket 32851, we are continuing our review of that machinery to determine whether or not it should receive our final approval and immunization. Pending our final decision in that docket, we will continue to consider these IATA agreements on a case-by-case basis.

Accordingly,

1. We approve those portions of Agreements C.A.B. 28236, C.A.B. 28249, C.A.B. 28250 set forth in finding paragraphs 1, 2, and 3 above, subject, where applicable, to conditions previously imposed by the Board or imposed herein; and

2. We disapprove those portions of Agreements C.A.B. 28236 and C.A.B. 28249 set forth in finding paragraph 4 above.

This order will be published in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,⁴
Secretary.

[FR Doc. 80-19017 Filed 6-23-80; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 38330; Order 80-6-112]

United States-Jordan Show Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause.

SUMMARY: The Board proposes to award U.S.-Jordan authority to Pan American and any other fit, willing, and able applicants. It has instituted the United States-Jordan Show Cause Proceeding, Docket 38330, for this purpose. New

⁴ All members concurred.

² Orders 80-4-129, 80-4-131, and 80-4-138 all dated April 17, 1980.

³ Orders 79-12-95, December 17, 1979; 79-9-138, September 24, 1979; 79-8-32, August 7, 1979; and 79-4-10, April 3, 1979.

applicants should submit certificate applications by July 9, 1980.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, NO LATER THAN July 30, 1980, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies of the applicant, the Department of Transportation, the Department of State, and the Ambassador of Jordan in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS: Docket 38330, Docket Section, Civil Aeronautics, Washington, D.C. 20428.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Joseph DiBella, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5035.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-19016 Filed 6-23-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss amendments to the Squid, Mackerel and Butterfish Fishery Management Plans (FMP's); discuss the draft Bluefish FMP, status of other FMP's, foreign fishing applications, other fishery management matters, as well as other administrative matters.

DATES: The meetings will convene on Wednesday, July 9, 1980, at 1 p.m., and

will adjourn at approximately 1 p.m., on Friday, July 11, 1980. The meetings are open to the public, and may be lengthened or shortened depending upon the progress made on the agenda. The meetings are open to the public.

ADDRESS: The meetings will take place at Rutgers University, Continuing Education Center, Clifton Avenue, Douglas College Campus, New Brunswick, New Jersey.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: June 19, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-19023 Filed 6-23-80; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

U.S. Government-Owned Inventions; Availability of Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for \$5.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for \$5.00 each (\$10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the Licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

U.S. Department of the Air Force, AF/JACP, 1900 Half Street, S.W., Washington, D.C. 20324

Patent 4-181,590: Method of Ion Plating Titanium and Titanium Alloys with Noble Metals and their Alloys; filed September

12, 1978, patented January 1, 1980. Not available NTIS.

U.S. Department of Agriculture, Program Agreements and Patent Branch, Administration Service Division, Federal Building, Science and Education Administration, Hyattsville, Md. 20782

Patent Application 6-110,864: Preparing Entomocidal Products with Oligosporogenic Mutants of "Bacillus thuringiensis"; filed January 9, 1980.

U.S. Department of Interior, Branch of Patents, 18th and C Streets, N.W., Washington, D.C. 20240

Patent Application 6-085,450: Modified Sulfur Cement; filed October 16, 1979.

Patent Application 6-085,451: Combined Rotating Bed Mechanical Dust Collector and Water Droplet Eliminator; filed October 16, 1979.

U.S. Department of the Navy, Assistant Chief for Patents; Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent Application 6-045,368: Reference Map Generation Method; filed May 31, 1979.

Patent Application 6-056,767: Reversible Plasticizer for Solid State Deformation Processes; filed July 12, 1979.

Patent Application 635,472: Chemical Encapsulation and Distribution; filed November 26, 1975.

Patent Application 675,671: Combustion System Using Dilute Hydrogen Peroxide; filed April 9, 1976.

Patent Application 680,003: An Improved Electron Beam Tube; filed April 23, 1976.

Patent Application 686,768: Device for Stimulation of Geothermal Wells; filed May 17, 1976.

Patent Application 723,880: Liquid Propellant Gun; filed September 16, 1976.

Patent Application 705,223: Composite Dome; filed July 14, 1976.

Patent Application 705,732: Infrared Imaging Device; filed July 15, 1976.

Patent Application 702,541: Low Altitude Optical Altimeter; filed July 6, 1976.

Patent Application 702,641: Fuel Injection with Flameholding; filed July 6, 1976.

Patent Application 702,642: Fluidic Combustion Control of a Ramjet; filed July 6, 1976.

Patent Application 705,733: Shock Buffer for Liquid Propellant Gun Projectile; filed July 15, 1976.

Patent Application 706,869: Explosive Closure Valve; filed July 19, 1976.

Patent Application 708,253: Edge Detection Analyzer; filed July 23, 1976.

Patent Application 712,456: Photoparamp Array Multiplexer; filed August 6, 1976.

Patent Application 714,436: Diver's Pulse Stretch Sonar; filed August 13, 1976.

Patent Application 720,915: Signal Processing Devices Using Residue Class Arithmetic; filed September 7, 1976.

Patent Application 742,448: Reticle-Lens System and Method; filed September 20, 1976.

Patent Application 744,051: Canted Rotary Seal; filed November 22, 1976.

Patent 4,170,707: Method for Preparing 3,8-Dicarbomethoxy-2,3,7,8-Tetraazaspiro [4.4] nona-1, 6-diene; filed August 28, 1978.

patented October 9, 1979, Not available NTIS.

National Aeronautics and Space Administration, Assistant, General Counsel for Patent Matters, NASA CODE GP-2, Washington, D.C. 20546

Patent Application 6-079,913: Means for Controlling Aerodynamically Induced Twist; filed September 28, 1979.

Patent Application 6-092,142: Aluminum Ion-Containing Polyimide Adhesives filed November 7, 1979.

Patent Application 6-096,257: Continuous Self-Locking Spiral Wound Seal; filed November 20, 1979.

Patent Application 6-106,118: Antenna Feed System for Receiving Circular Polarization and Transmitting Linear Polarization; filed October 30, 1979.

Patent Application 6-106,119: Faraday Rotation Measurement Method and Apparatus filed December 21, 1979.

Patent Application 6-106,188: Strong Thin Membrane Structure; filed December 21, 1979.

Patent 4-176,007: Method and Apparatus for Eliminating Luminol Interference Material; filed February 9, 1978 patented November 27, 1979. Not available NTIS

Patent 4,176,662: Apparatus for Endoscopic Examination; filed June 17, 1977, patented December 4, 1979, Not available NTIS

Patent 4,176,950: Laser Doppler Velocity Simulator; filed July 28, 1978, patented December 4, 1979, Not available NTIS

Patent 4,177,325: Aluminium or Copper Substrate Panel for Selective Absorption of Solar Energy; filed May 30, 1978, patented December 4, 1979, Not available NTIS

Patent 4,177,333: Catalysts for Polyimide Foams from Aromatic Isocyanates and Aromatic Dianhydrides; filed February 24, 1978, patented December 4, 1979, Not available NTIS

Patent 4,180,648: Crystalline Polyimides; filed May 15, 1978, patented December 25, 1979, Not available NTIS

Patent 4,181,589: Method for Separating Biological Cells; filed March 6, 1979, patented January 1, 1980, Not available NTIS

Chief, Intellectual Property, Division, OTJAG, Department of the Army, Room 2D 444, Pentagon, Washington, D.C. 20310

Patent Application 871,271 Helical Lock for Automatic Gun; filed January 23, 1978.

Patent 4,164,650 Means for Reducing Nuclear Radiation-Induced Fluorescence-Noise in Fiber-Optics Communications Systems; filed July 8, 1977, patented August 14, 1977. Not available NTIS

[FR Doc. 80-18978 Filed 6-23-80; 8:45 am]

BILLING CODE 3510-04-M

U.S. Government-Owned Inventions; Availability for Licensing

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Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for \$5.00 each (\$10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon the execution of a non-disclosure agreement.

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Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

U.S. Department of the Air Force, AF/JACP, 1900 Half Street, S.W., Washington, D.C. 20324.

Patent Application 6-090,385: Simplified Electrical Feedthrough System of Pressurized Containers; filed November 1, 1979.

U.S. Department of Energy, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 4-147,590: Nuclear Propulsion Apparatus with Alternate Reactor Segments; filed September 1, 1965, patented April 3, 1979, not available NTIS

U.S. Department of the Navy, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va 22217.

Patent Application 6-034,887: Signal Generator; filed April 30, 1979.

Patent Application 6-048,878: Mass-Transport Separator for Alkaline Nickel-Zinc Cells; filed June 15, 1979.

Patent Application 6-057,612: Room Temperature Two Color Infrared Detector; filed July 13, 1979.

Patent Application 6-070,073: Production of Antibody Toward Asbestos; filed August 27, 1979.

Patent Application 6-070,204: Signal Generator; filed August 27, 1979.

Patent Application 6-070,239: Multi-Layer Ram Air Parachute Canopy; filed August 27, 1979.

Patent Application 6-071,886: Rubber Boot Expander; filed September 4, 1979.

Patent Application 6-072,399: Normally Off InP Field Effect Transistor; filed September 4, 1979.

Patent Application 6-076,033: Optical Lithographic Method for Fabrication of Submicron Wide Lines; filed September 17, 1979.

Patent Application 6-076,057: Automatic Focusing System; filed September 17, 1979.

Patent Application 6-076,896: Pivotal Cable Guard for Retaining a Swingable—Movable Cable; filed September 19, 1979.

Patent Application 6-079,729: Ammunition Separator Tray; filed September 28, 1979.

Patent Application 6-080,761: Stabilizer; filed Oct. 1, 1979.

Patent Application 6-080,846: Single Crystal Thin Films; filed October 1, 1979.

Patent Application 6-082,504: A Transient Suppression Connector; filed October 3, 1979.

Patent Application 6-083,044: An Ultrasonic Image System; filed October 4, 1979.

Patent Application 6-088,264: Telescopic Launch and Retrieval Chute; filed October 25, 1979.

Patent Application 6-088,494: Integral Store Suspension and Communication Device; filed October 26, 1979.

Patent Application 6-088,498: Motor Drive; filed October 28, 1979.

Patent Application 6-088,904: High Acceleration Protection Seat; filed October 29, 1979.

Patent Application 6-090,787: Automatic Particle Analyzing System; filed November 2, 1979.

Patent Application 6-090,834: Self Compressing Supersonic Flow Device; filed November 1, 1979.

Patent Application 6-091,286: Inhibitor for Gun Propellants; filed December 5, 1979.

Patent Application 6-092,298: A Staircase Electrode-Wall Configuration for MHD Generators; filed November 5, 1979.

Patent Application 6-092,819: Submersible Energy Storage Apparatus; filed November 9, 1979.

Patent Application 6-093,483: Quick Disconnect Cap Having Pressure Venting Means; filed November 9, 1979.

Patent Application 6-093,790: Charging Mechanisms for Electrogasdynamic Spectral Anemometer; filed November 7, 1979.

Patent Application 6-095,111: Magnetic Flip-Flop for Hydrophone Preamplifier; filed November 16, 1979.

Patent Application 6-095,683: Solid State Laser and Material; filed November 19, 1979.

Patent Application 6-095,869: Optical Gain Control Device; filed November 19, 1979.

Patent Application 6-097,028: Power Frequency Converter; filed November 21, 1979.

Patent Application 6-097,269: Mooring System; filed November 21, 1979.

Patent Application 6-099,053: Solid Compositions for Generation Fluorine and Gaseous Fluorine Compounds; filed November 30, 1979.

Patent Application 6-099,355: Spinning Tubular Projectile Combustible Sabot; filed December 3, 1979.

Patent Application 6-099,380: Low-Power Electromagnetic Flowmeter; filed December 3, 1979.

Patent Application 6-101,029: Modulation Analysis Apparatus; filed Dec. 8, 1979.

Patent Application 6-101,312: Index-Matched Fused-Cladding Single Mode Bi-Directional Fiber Optic Access Coupler/Beamsplitter; filed December 7, 1979.

Patent Application 6-102,293: Acetylene-Terminated Dianil Monomer and the

Polymer Therefrom; filed December 10, 1979.
 Patent Application 6-102,701: Self-Restricting Shutoff Valve; filed December 17, 1979.
 Patent Application 6-104,511: A Holographic Optical Article and Process; filed December 17, 1979.
 Patent Application 6-104,521: Pilot Helmet Mounted CIG Display with Eye Coupled Area of Interest; filed December 17, 1979.
 Patent Application 6-105,176: Rifle Recoil Simulator; filed December 19, 1979.
 Patent Application 6-105,313: Electro-Optic Infantry Weapons Trainer; filed December 19, 1979.
 Patent Application 6-105,315: Method of Producing a Plaque Dispersing Enzyme; filed December 19, 1979.
 Patent Application 6-110,076: Thermal Battery Cells Utilizing Molten Nitrates as the Electrolyte and Oxidizer; filed January 7, 1979.
 Patent Application 6-111,443: Electrooptically Balanced Alternating Delta Beta Switch; filed January 11, 1979.
 Patent Application 6-113,426: Equi-Visibility Lighting Control System; filed January 18, 1979.
 Patent Application 6-113,875: Programmer Bootstrap Loading System; filed January 18, 1979.
 Patent Application 6-113,917: Hydrophone Deployment Apparatus for an Underwater Vehicle; filed January 21, 1979.
 Patent Application 6-114,780: Discrete Amplitude Shading for Lobe Suppression in Discrete Array; filed January 24, 1979.
 Patent Application 889,576: High Resolution Quantizer; filed March 23, 1979.
 Patent Application 916,423: Solid Compositions for Generation of Gases Containing a High Percentage of Hydrogen or Its Isotopes; filed June 16, 1979.
 Patent Application 929,595: Semi-Active Optical Fuzing; filed July 31, 1979.

National Aeronautics And Space Administration, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent Application 6-098,567: Precision Reciprocating Filament Chopper; filed November 29, 1979.
 Patent Application 6-098,569: Multi-Channel Temperature Measurement Amplification System; filed November 29, 1979.
 Patent Application 6-098,570: Solar Energy Control System; filed November 29, 1979.
 Patent Application 6-111,436: Magnetic Field Control; filed January 11, 1980.
 Patent Application 6-115,536: Smoothing Filter for Digital to Analog Conversion; filed January 25, 1980.

[FR Doc. 80-18999 Filed 6-23-80; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Tuesday, July 29, 1980, at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to

discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C. June 17, 1980.
Charles H. Atherton,
Secretary.

[FR Doc. 80-18970 Filed 6-23-80; 8:45 am]

BILLING CODE 6330-01-M

COUNCIL ON WAGE AND PRICE STABILITY

Price Advisory Committee, Meeting

AUTHORITY OF COMMITTEE: The Price Advisory Committee was established by the Council on Wage and Price Stability pursuant to Executive Order 12161 (44 FR 56663).

TIME AND PLACE OF MEETING: The next two meetings of the Price Advisory Committee have been scheduled. The Committee will meet on July 9, and August 13, 1980, at 10:00 a.m. in Room 2008 of the New Executive Office Building, 726 Jackson Place, NW., Washington, D.C. 20503.

Should the dates or time of these meetings need to be changed, a notice of change will be issued as quickly as possible.

PURPOSE OF THE MEETING: The purpose of the meetings will be to continue unfinished business from the Committee's earlier meetings.

PUBLIC PARTICIPATION: The meetings of the Price Advisory Committee will be open to the public. Public attendance will, however, be limited by available space; persons will be seated on a first-come first-served basis. Persons attending the meetings will not be permitted to speak or participate in the Committee's deliberations. Interested persons will be permitted to file written statements with the Committee by mail or personal delivery to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D.C. 20506

ADDITIONAL INFORMATION: For additional information, please telephone the Office of Public Affairs at (202)456-6756.

Dated: June 12, 1980.

Sally Katzen,

Advisory Committee Management Officer.

[FR Doc. 80-18904 Filed 6-23-80; 8:45 am]

BILLING CODE 3175-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[Permit Application Process No. 792253C/79-11-129G]

Lake Huron at Harbor Beach, Mich.; Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

Proposed Actions

The Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan, has made application to the Detroit District, U.S. Army Corps of Engineers, for a Department of Army permit under authority of Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act. The Company is requesting a permit to perform maintenance dredging in Lake Huron offshore of the Harbor Beach Power Plant and to deposit the dredged material in a low-lying/wetland area upland from Lake Huron, Rubicon Township, Huron County, Michigan.

The dredging would be accomplished by using a hydraulic hopper-type dredge. The hopper uses drag arm suction units to pull material from the bottom of the harbor and to pump it into the hoppers aboard ship. When the hoppers are filled to capacity, the dredge would move to a designated anchorage area and would pump the material through a hydraulic pipeline into a disposal area, located about 1.5 miles northwesterly of the dredging site.

Discharge of the dredged material would take place in a Confined Disposal Facility to be constructed by the Detroit Edison Company. The area designated for this facility is a low-lying/wetland area, about 55 acres in size. It is bounded on the west by a high natural bluff, on the south by Rapson Road, and on the east by highway M-25. Prior to commencement of disposal operations, containment dikes would be constructed along the northerly, easterly, and southerly perimeter of the disposal area. The dikes would be constructed of approximately 145,000 cubic yards of clay obtained from a 22 acre upland borrow area, located approximately 100 feet west of the proposed disposal facility. The borrow area would be later utilized for the disposal of fly ash from the Harbor Beach Power Plant.

The dredged material disposal facility would have an approximate holding capacity of 1,000,000 cubic yards. A permanent pond would be maintained inside the facility, and the water level would be controlled by means of an overflow weir.

The purposes of the proposed project are to provide and maintain adequate depths for commercial vessels delivering coal to the Harbor Beach Power Plant and to provide a permanent disposal area for safe storage of the contaminated sediments removed from the harbor at Harbor Beach. The confined disposal facility would also be available to the Corps of Engineers for storing the contaminated materials dredged from the Federally-maintained harbor and channel at Harbor Beach.

Alternatives—Alternatives to be addressed in the Draft Environmental Impact Statement include:

- (1) Open water disposal of dredged material.
- (2) Alternative sites for land disposal of dredged material.
- (3) No Action.

Scoping Process

a. **Public Involvement**—In order to identify significant issues, a scoping meeting will be held with affected governmental agencies prior to preparation of the Draft Environmental Impact Statement. Written comments from the general public, including interested persons or groups, will be solicited for use in the scoping process.

b. **Significant Issues**—Comments that have already been received in response to an May 8, 1980 Public Notice for the project indicate that the effects of disposal activities on wildlife habitat, impacts on water quality (including any impact on municipal or private water supplies), operational requirements of the Harbor Beach Power Plant, and the need for the Plant are likely to be significant issues for inclusion in the Draft Environmental Statement.

c. **Other Environmental Review and Consultation Requirements**—The following environmental review and consultation requirements are applicable to this project:

Corps of Engineers, Department of the Army Regulatory Program of the Corps of Engineers, 33 CFR Parts 320-329.

Corps of Engineers, Department of the Army, 33 CFR Part 230, Environmental Quality: Policy and Procedure for Implementing NEPA (ER-200-2-2).
Endangered Species Act of 1973, as Amended, 16 U.S.C. 1531 et. seq.

Estimated Date of DEIS Release—It is anticipated that the DEIS will be available to the public on October 10, 1980.

Address—Questions about the proposed action and DEIS can be answered by: Daniel R. Allega, Harbor Beach DEIS Manager, U.S. Army Corps of Engineers, P.O. Box 1027, Detroit, Michigan 48231.

Dated: June 17, 1980.

P. McCallister,
Acting District Engineer.

[FR Doc. 80-18972 Filed 6-23-80; 8:45 am]

BILLING CODE 3710-GA-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting, board of advisors to the fund.

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that the next meeting of the Board of Advisors to the Fund for the Improvement of Postsecondary Education will be held on July 17, 1980 at 5:00 p.m. through July 19, 1980 at 4:00 p.m. at the Samoset Resort and Conference Center, Rockport, Maine.

The Board of Advisors to the Fund was established to recommend to the Director of the Fund, Assistant Secretary for Educational Research and Improvement, and the Secretary priorities for funding and the approval or disapproval of grants and contracts of a given kind or over a designated amount under section 404 of the General Education Provisions Act.

The meeting will be open to the public. It will be for the sole purpose of discussing the fund's future role in the new Department and Board's responsibilities.

A summary of the proceedings of the meeting and a roster of members may be obtained from the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202, telephone 202-245-8091.

Dated: June 10, 1980.

Charles I. Bunting,
Acting Director.

[FR Doc. 80-18923 Filed 6-23-80; 8:45 am]

BILLING CODE 4000-01-M

Rehabilitation Short-Term Training Projects of National Scope

AGENCY: Department of Education.

SUBJECT: Notice of Closing Date for Transmittal of Applications for the Rehabilitation Short-Term Training Program of National Scope.

SUMMARY: Applications are invited under the Rehabilitation Short-Term Training Grant Program of National Scope.

Authority for this program is contained in Section 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 774).

Awards are made under this program to State vocational rehabilitation agencies and other public or non-profit agencies and organizations, including institutions of higher education.

The purpose of rehabilitation short-term training grants is to improve the professional practice skills of vocational rehabilitation and independent living rehabilitation workers serving physically and mentally disabled individuals.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by August 8, 1980.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 13.629, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except

Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: An estimated \$500,000 will be available for rehabilitation short-term training grants of national scope in FY 1980.

It is expected that approximately 6 to 8 grants will be awarded and the amount of the grants will range from \$50,000 to \$85,000. These estimates do not bind the Department of Education except as may be required by the applicable statute and regulations.

Grantee share of project: It is expected that grantees will provide some of the total project costs. Institutions of higher learning and other nonprofit institutions may consider actual indirect costs in excess of the 8 percent allowed on training grants as part of the grantee contribution to the project.

Application forms: Application kits which contain the prescribed application forms and other information for the applicant, including the FY 1980 General Plan for Rehabilitation Short-Term Training of National Scope, may be obtained by writing to the Director, Division of Manpower Development, Rehabilitation Services Administration, Room 3321, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

In order to be considered for a rehabilitation short-term training grant of national scope, all applications must be submitted on standard forms provided for this purpose by the Secretary. The application must be executed by an individual authorized to act for the applicant agency and to assume the obligations imposed by the terms and conditions of the grant award, including the regulations for the Rehabilitation Short-Term Training Program.

One signed original and two copies of the grant application, including all attachments, are required. The original and the two copies of all completed applications should be submitted to the Department of Education, Application Control Center, Attention: 13.629, Washington, D.C. 20202.

OMB circular A-95 notification process: Applicants for rehabilitation short-term training grants are not routinely required to notify the State and Area-wide A-95 Clearinghouse of the intent to apply for Federal assistance. States are authorized to extend the project notification and review procedures of OMB Circular A-95 to include training grants. If the applicant's State has extended the coverage of Circular A-95 to this

program, however, the Clearinghouse procedures must be observed.

Application consideration: The Secretary of Education determines the final action to be taken with respect to each grant application.

All grant applications are subjected to a competitive review and evaluation conducted by qualified non-Federal consultants experienced in the training of rehabilitation personnel. The Secretary takes into account the competitive review by the non-Federal consultants, and the comments of the State vocational rehabilitation agencies, the RSA Regional Offices and the Rehabilitation Services Administration Central Office program offices, in reaching a decision on each competing application.

After the Secretary has reached a decision either to disapprove or not to fund a competing grant application, the unsuccessful applicant is notified in writing of that decision.

State Vocational Rehabilitation Agency review: Applicants are advised to consult with their State vocational rehabilitation agency in the initial stages of application development. Applications submitted under the rehabilitation short-term training program are not required to have State vocational rehabilitation agency approval before submission to the Department of Education. A copy of the application may be submitted by the applicant concurrently to the State vocational rehabilitation agency for information purposes.

Grant awards to successful applicants: The Secretary makes grant awards consistent with the purpose of the Rehabilitation Act of 1973, as amended, the regulations, and program announcements within the limit of Federal funds available. The official grant award document is the Notice of Financial Assistance Awarded which sets forth in writing the amount of funds granted, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the budget period for which support is given and the total grantee participation. The award also specifies the project period for which support is contemplated.

Special consideration for funding: In fiscal year 1980 the following program priorities, not in order of priority, have been identified for short-term training of national scope:

- (a) The Coordination of Vocational Rehabilitation, Vocational Education and Special Education.
- (b) Issues in Bi-Cultural Rehabilitation Service Delivery.
- (c) Independent Living Rehabilitation Services.

(d) Rehabilitation of Learning Disabled Individuals.

(e) Rehabilitation Facility Specialist Training.

(f) The Rehabilitation of Underserved Populations.

An application which is submitted primarily for the support of a conference or a meeting, on which proposes to provide training which is not national in scope will be considered to be ineligible and will be returned to the applicant.

Program goals and objectives: Rehabilitation short-term training of national scope includes workshops, institutes, seminars, or other short-term training courses conducted in order to provide special training of national significance at a single training setting, or on a coordinated basis, at a number of different training settings, in content areas of priority interest to the national State/Federal rehabilitation program. The training is expected to meet training needs of a non-recurrent nature.

Selection Criteria: Applications are evaluated against the following criteria:

(a) The relevance of the content of the proposed short-term training to the administratively established objectives of the State/Federal vocational rehabilitation program, the objectives of the Rehabilitation Act of 1973, as amended, the objectives of the rehabilitation short-term training program of national scope, and the FY 1980 priorities for rehabilitation short-term training.

(b) The qualifications of the instructional staff and the facilities and resources of the applicant organization.

(c) The reasonableness of the budget in relation to the proposed project and the anticipated results.

(d) The methodology to be employed in implementing the project and its feasibility for the achievement of the established educational objectives.

(e) The financial and other resources of the applicant for accomplishing the objectives of the training project and how much the applicant plans to contribute to the total cost of the project.

(f) The criteria to be used for the selection of individuals to whom traineeships are to be awarded.

(g) Evidence that the training institution is free of architectural, communication, and other barriers to the training of handicapped individuals.

(h) Where appropriate, evidence of current accreditation by the designated accrediting agency.

(i) The extent to which application instructions are adequately addressed, including both the narrative statement and budget justification.

(j) The extent to which the proposal provides for an evaluation methodology,

including the manner in which the methodology will be employed to measure the achievement of the objectives of the training program.

(k) The evidence of a working relationship with an appropriate State vocational rehabilitation agency and other agencies providing vocational rehabilitation services.

(l) The extent to which the proposal is of a national scope.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Rehabilitation Short-Term Training Program (45 CFR Part 1362, Subpart A and Subpart E).

(b) The Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c) published in the *Federal Register* on April 3, 1980 at 45 FR 22494.

Waiver of proposed rulemaking procedures affecting selection criteria: In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1332(b)(2)(A)), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed regulations, including the selection criteria to be used in discretionary grant programs such as the rehabilitation short-term training program. Selection criteria are not currently included in the regulations for the rehabilitation short-term training program, however, because the Rehabilitation Services Administration was relocated within the Department of Education on May 5, 1980 and requirements affecting the inclusion of such criteria in regulations had not previously applied to the Rehabilitation Services Administration.

The publication of proposed rulemaking covering the selection criteria identified in this notice would be impracticable and contrary to the public interest under 5 U.S.C. 553(b) if grants are to be made in a timely manner in FY 1980.

The selection criteria identified in this notice was included in Program Announcement No. 13629-792 published in the *Federal Register* of April 4, 1979 in connection with FY 1979 Rehabilitation Short-Term Training of National Scope. The regulations covering the rehabilitation short-term training program are being revised in order to incorporate this material.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Department of Education (Room 3321 Switzer Building) 330 C Street, SW., Washington, D.C.

20201, Telephone: (202) 245-0079. (29 U.S.C. 774).

(Catalog of Federal Domestic Assistance No. 13.629, Rehabilitation Training)

Dated: June 19, 1980.

Steven A. Minter,

Acting Secretary of Education.

[FR Doc. 80-18992 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-02-M

DEPARTMENT OF ENERGY

National Petroleum Council; Refinery Capability Task Group and the Coordinating Subcommittee of the Committee on Refinery Flexibility; Meetings

Notice is hereby given that the Refinery Capability Task Group and the Coordinating Subcommittee of the National Petroleum Council's (NPC) Committee on Refinery Flexibility will meet on Tuesday, July 1; and Monday, July 21, 1980, respectively in Suite 601 of the National Petroleum Council Headquarters, 1625 K Street NW., Washington, D.C.

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply, Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee. The tentative agendas of the meetings are as follows:

Agenda for the Refinery Capability Task Group meeting, Tuesday, July 1, 1980, beginning at 9:00 a.m.:

1. Review and approve summary minutes of the May 12, 1980, meeting of the Task Group.
2. Review and discuss progress of study groups A, B, and C.
3. Discuss plans for the final phase of the Refinery Flexibility report.
4. Discuss any other matters pertinent to the overall assignment of the Task Group.

Agenda for the Coordinating Subcommittee Meeting, Monday, July 21, 1980, beginning at 10:00 a.m.:

1. Review and discuss the progress of the Refinery Capability Task Group.

2. Review and discuss the progress of the Oil Supply, Demand and Logistics Task Group.

3. Review and discuss introductory materials for the overall report on refinery flexibility.

4. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

All meetings are open to the public. The Chairmen of the Task Group and the Subcommittee are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with either the Task Group or the Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements at any of the meetings should inform Joan Walsh Cassidy, National Petroleum Council (202) 393-6100, prior to the meeting, and provision will be made for their appearance on the respective agendas. Transcripts of the Coordinating Subcommittee meeting will be available for public review at the Freedom of Information Public Reading Room, Room 5B180, Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on June 16, 1980.

R. Dobie Langenkamp,

Deputy Assistant Secretary for Resource Development and Operations.

[FR Doc. 80-18915 Filed 6-23-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the United States and Japan (Atomic Energy, Cooperation for Civil Uses).

The subsequent arrangement to be carried out under the above mentioned agreement involves the extension to April 30, 1981, of an agreement executed between the United States and Japan for the reprocessing of up to 99 tons of US-supplied fuel at the Tokai reprocessing facility. The original agreement which was signed on September 12, 1977, was to cover a two-year period, i.e., until September 12, 1979. At that time, both Governments agreed to extend the

period to April 30, 1980. The proposed subsequent arrangement would extend the agreement, with certain modifications, to April 30, 1981.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than July 9, 1980.

For the Department of Energy.

Dated: June 20, 1980.

Frederick F. McGoldrick,

*Acting Director for Nuclear Affairs,
International Nuclear and Technical
Programs.*

[FR Doc. 80-19057 Filed 6-23-80; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Energy Research Advisory Board; Renewal

This notice is published in accordance with the provisions of Section 7 of the Office of Management and Budget Circular A-63, as amended. Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Energy Research Advisory Board has been renewed for a 24-month period ending on June 19, 1982.

The renewal of the Energy Research Advisory Board has been determined necessary and in the public interest. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the Department of Energy Organization Act (Pub. L. 95-91), OMB Circular A-63 (Revised), and other directives and instructions issued in implementation of those Acts.

Further information regarding this Board may be obtained from the Department of Energy Advisory Committee Management Office (202) 252-5187.

Issued at Washington, D.C., on June 19, 1980.

John C. Sawhill,
Deputy Secretary.

[FR Doc. 80-19046 Filed 6-23-80; 8:45 am]

BILLING CODE 6450-01-M

Fusion Study Group of the Energy Research Advisory Board; Draft Report Availability

NAME: Fusion Study Group of the Energy Research Advisory Board (ERAB)

is a Committee constituted under the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770).

CONTACT: Thomas J. Kuehn, Executive Director, Energy Research Advisory Board, Department of Energy, Forrestal Building, MS 3F-032, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202/252-8933.

PURPOSE OF THE PARENT BOARD: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Fusion Study Group will make recommendations to the parent Board.

PUBLIC PARTICIPATION: Following its public meeting on May 23, 1980, the Fusion Study Group is preparing a draft report. Notice is hereby given of the availability of the draft report on or about June 23, 1980 and will be provided upon request to the contact given above. Members of the public who wish to comment on the draft report should send written statements to the contact given above prior to August 11, 1980. The final draft report will be submitted to ERAB for approval at its public meeting (Summer Study) August 18-22, 1980.

Issued at Washington, D.C., on June 19, 1980.

Edward A. Frieman,

Director of Energy Research.

[FR Doc. 80-19044 Filed 6-23-80; 8:45 am]

BILLING CODE 6450-01-M

National Energy Extension Service Advisory Board; Renewal

Notice is hereby given that the National Energy Extension Service Advisory Board, which was established in accordance with Pub. L. 95-39, Title V, the National Energy Extension Service Act, has been renewed for a two-year period ending June 14, 1982.

The renewal of this Board has been determined necessary and in the public interest. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the Department of Energy Organization Act (Pub. L. 95-91), OMB Circular A-63 (Revised), Pub. L. 95-39, and other directives and instructions issued in implementation of those Acts.

Further information regarding this Board may be obtained from the Department of Energy Advisory Committee Management Office (202-252-5187).

Issued at Washington, D.C., on June 19, 1980.

Tina Hobson,

Advisory Committee Management Officer.

[FR Doc. 80-19045 Filed 6-23-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1523-3]

Approval of New York's NPDES Program to Regulate Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the State of New York's request for authority to administer the National Pollutant Discharge Elimination System (NPDES) with respect to Federal facilities.

SUMMARY: On June 13, 1980, the Environmental Protection Agency (EPA) approved the State of New York's request to include regulation of Federal facilities under their State water pollution permit program. Previously the State had been approved to participate in the National Pollutant Discharge Elimination System (NPDES).

FOR FURTHER INFORMATION CONTACT: Joel Blumstein, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-426-4793.

SUPPLEMENTARY INFORMATION: In 1977 Congress amended section 313 of the Clean Water Act (33 U.S.C. 1251, et seq.) to authorize States to regulate Federally owned or operated facilities under their water pollution control programs. Prior to the amendment, States, including those authorized pursuant to section 402(b) of the Clean Water Act to participate in the National Pollutant Discharge Elimination System (NPDES), were precluded from regulating Federal facilities. Therefore, the Environmental Protection Agency (EPA) in approving State programs under section 402(b) reserved the authority to issue NPDES permits to Federal facilities.

With the passage of the 1977 amendments, EPA has been transferring NPDES authority over Federal facilities to approved States. Today's Federal Register notice is to announce the approval of the State of New York's request to assume NPDES authority over Federal facilities.

Also included in this notice is a list of approved NPDES States indicating which have been granted Federal facilities and pretreatment authority.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
California	05/14/73	05/05/78	
Colorado	03/27/75		
Connecticut	09/26/73		
Delaware	04/01/74		
Georgia	06/28/74		
Hawaii	11/28/74	06/01/79	
Illinois	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	
Kansas	06/28/74		
Maryland	09/05/74		
Michigan	10/17/73	12/09/78	
Minnesota	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74		
Missouri	10/30/74	06/26/79	
Montana	06/10/74		
Nebraska	06/12/74	11/02/79	
Nevada	09/19/75	08/31/78	
New York	10/28/75	06/13/80	
North Carolina	10/19/75		
North Dakota	06/13/75		
Ohio	03/11/74		
Oregon	09/26/73	03/02/79	
Pennsylvania	06/30/78	06/30/78	
South Carolina	06/10/75		
Tennessee	12/28/77		
Vermont	03/11/74		
Virgin Islands	06/30/76		
Virginia	03/31/75		
Washington	11/14/73		
Wisconsin	02/04/74	11/26/79	
Wyoming	01/30/75		

Dated: June 13, 1980.

Jeffrey G. Miller,
Acting Assistant Administrator for
Enforcement.

[FR Doc. 80-19000 Filed 6-23-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL ELECTION COMMISSION

[Notice 1980-23]

Opinion and Regulation Index

A new cumulative Index to Advisory Opinions and Opinions of Counsel (discontinued in April 1976) issued by the Federal Election Commission is now available for purchase in the Public Records Division of the Commission. The updated index includes a subject index and a U.S. Code Index (in three parts) covering opinions issued from the establishment of the Federal Election Commission in April 1975 through May 1980, as well as an F.E.C. Regulation index covering opinions from 1977 through May 1980. This issue of the Advisory Opinion Index includes a transfer table that compares the old code and regulation cites to the new ones that have resulted from the 1979 amendments to the F.E.C.A.

Purchase price of the new index is \$3.60 to cover duplication costs, payable in advance. Checks should be made payable to: United States Treasurer. Person to contact: Mr. Craig Brightup, Public Records Division, Federal Election Commission, 1325 K Street,

N.W., Washington, D.C. 20463.
Telephone: (202) 523-4181.

Dated: June 17, 1980.

Max L. Friedersdorf,
Chairman for the Federal Election
Commission.

[FR Doc. 80-18953 Filed 6-23-80; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3081-EM]

Pennsylvania; Emergency and Related Determinations

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of an emergency for the Commonwealth of Pennsylvania (FEMA-3081-EM), dated June 13, 1980, and related determinations.

DATED: June 13, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 634-7848.

NOTICE: Pursuant to the authority vested in the Director of the Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegation to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of June 13, 1980, the President declared an emergency as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from severe storms and tornadoes beginning on or about June 3, 1980, is of sufficient severity and magnitude to warrant an emergency declaration under Public Law 93-288. I therefore declare that such an emergency exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to donate Government-owned mobile homes to the Commonwealth of Pennsylvania for the purpose of providing temporary housing under the provisions of Section 404 of Pub. L. 93-288. You are further authorized to allocate, from funds available for these purposes, such amounts as you find necessary for administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director

under Federal Emergency Management Agency Delegation of Authority, I hereby appoint Mr. Guy F. Brackett of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared emergency.

The Counties of Allegheny, Armstrong, Indiana and Westmoreland for assistance as authorized by the President's declaration. Such assistance will be provided in accordance with Section 315 of Pub. L. 93-288.

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance Billing Code 6718-02)

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-18995 Filed 6-23-80; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Joint Notice of Adoption of Standard Descriptive Terms To Be Used in Competitive Factor Reports Prepared Pursuant to the Bank Merger Act (12 U.S.C. 1828(c))

AGENCIES: Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency.

ACTION: Adoption by the three federal bank regulatory agencies represented on the Federal Financial Institutions Examination Council of Standard Descriptive Terms to be used in Competitive Factor Reports prepared in Response to Interagency Requests Made Under the Bank Merger Act (12 U.S.C. 1828(c)).

EFFECTIVE DATE: June 11, 1980.

SUMMARY: The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency have adopted standard terms to describe the competitive effects of mergers in competitive factor reports prepared in response to interagency requests made under the Bank Merger Act (12 U.S.C. 1828(c)).

Prior to this action the three agencies used somewhat different terminology. The adoption of standard terms should facilitate analysis of merger applications by the agencies. Under the Bank Merger Act, the Federal bank regulator deciding

the application must obtain reports on the competitive factors involved in the merger from the other two federal banking agencies and the Attorney General's Office.

The standard terms adopted by the three agencies to describe competitive effects are:

- **Monopoly.**—Means the proposed transaction must be disapproved in accordance with 12 U.S.C. 1828(c)(5)(A);
- **Substantially Adverse.**—Means that the proposed transaction would have anticompetitive effects which preclude approval unless the anticompetitive effects are clearly outweighed in the public interest by the probable benefit of the transaction in meeting the convenience and needs of the community to be served;
- **Adverse.**—Means that proposed transactions would have anticompetitive effects which would be material to the decision, but which would not preclude approval; and
- **No Significant Effect.**—Means that the anticompetitive effects of the proposed transaction, if any, would not be material to the decision.

Dated: June 13, 1980.

Griffith L. Garwood,

Deputy Secretary, Board of Governors of the Federal Reserve System.

Dated: June 13, 1980.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: June 13, 1980.

John G. Heimann,

Comptroller of the Currency, Office of the Comptroller of the Currency.

[FR Doc. 80-18976 Filed 6-23-80; 8:45 am]

BILLING CODE 6722-01-M

Joint Notice of Uniform Guideline on Internal Control for Foreign Exchange Activities in Commercial Banks

AGENCIES: Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

ACTION: Adoption of uniform guideline on internal control for foreign exchange activities in commercial banks by the three Federal bank regulatory agencies represented on the Federal Financial Institutions Examination Council.

SUMMARY: This guideline sets forth minimum standards concerning internal control for foreign exchange activities in commercial banks. An internal control system is composed of administrative and accounting controls concerned with authorization and accounting for

transactions and safeguarding of assets. This guideline covers (a) policy documentation, (b) internal accounting controls, and (c) audit documentation.

EFFECTIVE DATE: June 11, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Hugh W. Conway, Review Examiner, Federal Deposit Insurance Corporation, 550 17th Street, NW., Room 668N, Washington, D.C. 20429, (202) 389-4431.

SUPPLEMENTARY INFORMATION: The Council published a proposed foreign exchange policy statement for comment in the *Federal Register* July 27, 1979 (44 FR 44267-44269). Since then the Council's Task Force on Supervision has analyzed the forty comments received and has made appropriate revisions. The final guideline endorsed by the Examination Council and adopted by the three federal banking agencies reflects two major revisions. First, the statement is now characterized as a guideline on minimum standards which allows flexibility to depart from such standards in certain circumstances. Second, most of the detailed provisions dealing with internal and external audit workpapers and reports have been deleted.

The Federal Financial Institutions Examination Council hereby announces adoption of the following uniform guideline by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency:

Uniform Guideline on Internal Control for Foreign Exchange Activities in Commercial Banks

Foreword

This guideline represents the current judgment of the three federal bank regulatory agencies on minimum internal control for foreign exchange activities in commercial banks. An internal control system is composed of administrative and accounting controls concerned with authorization and accounting for transactions and safeguarding of assets. This guideline focuses on (a) the establishment and documentation of policy; (b) internal accounting controls; and (c) audit documentation. It reinforces existing procedures and practices widely utilized by commercial banks in monitoring and controlling their foreign exchange activities and in providing timely and accurate reports to bank boards of directors, senior management, supervisory authorities, and other interested parties. It also applies to those foreign exchange activities undertaken to fund loans or other

extensions of credit through the money markets.

Most commercial banks already have adequate systems and procedures for monitoring and controlling their foreign exchange activities that meet or exceed these guidelines. In establishing systems, a bank considers the flexibility needed by traders to protect the bank, its size and organizational structure, the volume of activity and the costs associated with individual controls, as well as the differences in law and practice between trading markets. This guideline is a basis by which management, auditors, and supervisory authorities can evaluate a bank's internal control for foreign exchange activities. It should prove useful to bank management and supervisory authorities in promoting safety and soundness of individual banks and of the banking system as a whole.

Bank management is responsible for establishing an adequate audit function. The section on audit documentation below does not describe how audits should be conducted. Rather, that section is intended to facilitate identification and appraisal of the extent of internal and external audit work being performed.

This document is not intended to be all encompassing as to policies and procedures expected to be found in the most active market participants. It is essential that each bank's system of control be commensurate with the risks to which it is exposed. In certain situations, these minimum guidelines may specify greater internal control than is appropriate to a specific bank's activity. In such case, if the bank does not meet these minimum guidelines, the bank should stand ready to demonstrate that risks attendant to its activities are adequately controlled. Such a bank should discuss its situation with its federal supervisory authority.

Documentation of Policy

Each bank engaged in foreign exchange trading should have written memoranda setting forth the goals and policies established for that activity by senior management. The memoranda should describe the scope of trading activity authorized, the lines and delegation of authority and responsibility, the types of services offered, trading limits, reporting requirements, internal accounting controls, and other instructions to trading personnel at each office of the bank.

The bank's trading policy should include guidelines or required reports with respect to the following:

- (1) Net overnight positions by currency, including US dollars;
- (2) Maturity distribution by currency of foreign currency assets, liabilities, and foreign exchange contracts;
- (3) Outstanding contracts with individual customers and banks;
- (4) Credit approval procedures for delivery or settlement risk either in the form of settlement limits or through other specified management controls; and

(5) Total value of outstanding contracts, spot and forward, to allow for review of the bank's general involvement in exchange markets or changes in trading patterns.

The policy should provide for reporting procedures adequate to properly inform management of trading activities and to facilitate detection of lack of compliance with policy directives. Each bank's head office should maintain current and complete records of exceptions to directives, policies, or controls pertaining to individual trading offices. Some very large banks have delegated substantial senior management review responsibility to major regional offices. Head office records referred to in this paragraph may be maintained at major regional offices where such records are accessible to examination personnel.

There should be periodic review and approval of established policies and controls. Consideration should be given to actual and projected trading, particularly of those offices where activity is not consistent with existing guidelines or limits.

Whether a bank sets customer delivery limits or weighs delivery risk in determining individual customer limits for outstanding contracts, the bank should have documentary evidence that a customer's delivery exposure is being reviewed by responsible account and trading officials. Every bank should have the capability to readily report delivery exposure with customers and banks.

The bank should, either in its overall code of conduct for employees or in its foreign exchange policy, set written standards covering:

- (1) Trading with entities affiliated with the bank or with members of the board of directors;
- (2) Foreign exchange and deposit transactions with other employees;
- (3) Personal business activities of the bank's dealers involving foreign exchange; and
- (4) Personal business relationships with foreign exchange and money brokers with whom the bank deals.

Management should ensure that these written policies are periodically

reviewed with all dealers. The terms and conditions of any such transactions should not vary materially from similar transactions with nonrelated parties. The policy should cover any arrangements whereby a bank trading office holds positions or executes contracts either for the account of other offices of the bank or for the account of outside parties.

Internal Accounting Controls

Each trading office should have available a written description of the organization and procedures used to account for and control both foreign exchange and those transactions involving foreign exchange to fund loans or other extensions of credit through the money markets. The organization and procedures should be adequate to give reasonable assurance that (a) reports on trading and funding activities are current and complete and (b) the possibility of misappropriation of funds or concealment of unauthorized transactions is minimized.

The following is a list of eleven internal controls that should be considered minimum for most systems. It is possible that a bank may address a risk area in a manner which is adequate although different from that listed below. In such case, the bank should stand ready to justify the omission.

- (1) A chart of accounts and descriptions of the use of the accounts and the operation of the books of account.
- (2) Segregation of duties between trading personnel and those performing trade-related accounting or disbursement functions.
- (3) A procedure to allow reconstruction of the date and the approximate order or time trading personnel entered into individual contracts. Contract forms should be controlled and should bear a preparation date, if different from transaction date.

(4) Clear descriptions of the types of interest arbitrage transactions (financial swaps/treasury swaps/internal contracts) in a bank's foreign exchange accounting system together with descriptions of the accounting entries and bookkeeping methods for each type of interest arbitrage transaction.

(5) A procedure under which contract confirmations are sent and received by staff independent of the trading operation. Outgoing confirmations should include the following:

- (a) Date of transaction, date of preparation if different from transaction date, and date of value or maturity date;

(b) Amounts of the currencies traded, accepted, or placed, and the applicable rate;

- (c) Name of counterparty; and
- (d) Liquidation instruction, if known, and reference number.

Incoming confirmations should be verified by comparison with contracts. The bank should maintain a confirmation exception log or other record of every exception between an incoming confirmation and the bank's own records regardless of disposition. This exception record should be reviewed by a supervisor or official independent of the trading function. Some banks do not confirm spot contracts on the theory that the need for confirmation is quickly obviated by the settlement of such contracts. Any bank which omits such confirmation should be satisfied that alternate internal controls are sufficient.

(6) A holdover register to record trades made but not posted to the bank's ledgers at the end of the day, the identification of such contracts as "holdover" items, and their inclusion in the trader or trading office day-end position reports to management.

(7) A daily reconciliation of the dealers' position sheets with the bank trading positions as recorded in books and records of the bank.

(8) Information on all overdraft charges and brokerage bills and on authorizations for such payments within the last 12 months; and retention of all foreign exchange telex tapes or copies for at least 90 days.

(9) Procedures for revaluing positions including independent verification of rates.

(10) Documentation of review and approval of limits and sublimits should evidence that consideration is given to actual and projected trading—particularly of offices where existing limits have consistently exceeded actual activity.

(11) Procedures to insure prompt identification and reporting of exceptions to limits and non-delivery upon settlement date.

Audit Documentation

Federal bank examiners in reviewing foreign exchange activities increasingly rely on the work done by bank internal and external auditors. Adequate documentation of internal audit work and ready access to external auditors' reports will facilitate the judgment by bank examiners of the degree to which they may rely on internal controls and internal audits.

Significant exceptions disclosed in internal audits of foreign exchange activities should be reported in writing

to the board of directors or a committee thereof. Such exceptions would include any significant uncorrected weakness in the system of internal accounting control; any significant unsatisfactory level of compliance with the existing internal control system; or any significant inadequacy in information supplied management regarding activity and positions.

Internal audit reports, workpapers and files should be readily available for review by examination personnel at the bank's head office or elsewhere but need not be present at the site of every facility examined.

The internal auditor's files should contain evidence that the following steps have been taken.

(1) The auditor has determined that the accounting system in use is adequately documented and that it conforms to bank policy.

(2) The auditor has identified the internal controls incorporated in the accounting system and has determined whether they are sufficient to control risks related to the activity. The basis for decisions that it is not feasible or cost-effective to control certain risks should be assessed by the auditor. Findings of insufficient controls should be set out in audit files. Files should indicate the specific controls, if any, recommended by regulatory guidelines but omitted from the system, and should discuss the reasons for such omission.

(3) The auditor has tested the internal controls to ascertain that they are, in fact, operative. Tests should include (a) tests of the accuracy of financial statements, reports to management and reports to regulatory agencies and (b) tests of trading personnel compliance with bank policies and directives applying to foreign exchange.

It is essential that the internal auditor be alert to detect changed conditions which would affect the auditor's earlier determinations relating to the adequacy and effective operation of controls. Therefore, audit files should evidence the steps taken by the auditor to identify changed conditions. However, a comprehensive detailed evaluation of internal control is not necessary at every audit of foreign exchange activity.

Any external audit reports, management letters, engagement letters, and other descriptions of audit scope, procedures, or findings provided to a bank by its external auditor should be readily available to examiners.

Dated: June 13, 1980.
Griffith L. Garwood,
Deputy Secretary, Board of Governors of the Federal Reserve System.

Dated: June 13, 1980.
Hoyle L. Robinson
Executive Secretary, Federal Deposit Insurance Corporation.

Dated: June 13, 1980.
John G. Heimann,
Office of the Comptroller of the Currency.
 [FR Doc. 80-18977 Filed 6-23-80; 8:45 am]
 BILLING CODE 6722-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than July 18, 1980.

A. Federal Reserve Bank of Atlanta
 (Robert E. Heck, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303:

Southeast Banking Corporation, Miami, Florida (trust activities; Florida); to engage through its subsidiary, southeast Banks Trust Company, N.A., in activities that may be carried on by a trust company, including activities of a fiduciary, investment advisory, agency, or custodial nature. These activities would be conducted from an office in Boca Raton, Florida, serving Boca Raton and surrounding areas within Palm Beach County, Florida.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94130:

Security Pacific Corporation, Los Angeles, California (financing and credit-related insurance activities; Florida); to engage through its subsidiaries Security Pacific Finance Corp. (formerly American Finance Corporation of Florida) and Security Pacific Finance Corp. of Florida (formerly American Consumer Finance Corporation), in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company and acting as broker of agent for the sale of credit-related life, accident and health insurance and credit-related property and casualty insurance. These activities would be conducted from offices of Security Pacific Finance Corp. (formerly American Finance Corporation of Florida) and Security Pacific Finance Corp. of Florida (formerly American Consumer Finance Corporation), located in Fort Lauderdale, Florida, serving the State of Florida.

C. Other Federal Reserve Banks:
 None.

Board of Governors of the Federal Reserve System, June 18, 1980.

Cathy L. Petryshyn,
Assistant Secretary of the Board.

[FR Doc. 80-18949 Filed 6-23-80; 8:45 am]
 BILLING CODE 6210-01-M

East Troy Bancshares; Formation of Bank Holding Company

East Troy Bancshares, East Troy, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of State Bank

of East Troy, East Troy, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than July 9, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 18, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-18950 Filed 6-23-80; 8:45 am]

BILLING CODE 6210-01-M

Mark Twain Bancshares, Inc.; Acquisition of Bank

Mark Twain Bancshares, Inc., St. Louis, Missouri, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Empire Bancorp, Inc., Kansas City, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Mark Twain Bancshares, Inc., St. Louis, Missouri, is also engaged in the following nonbank activities: holding real property under lease for use by Applicant's banking subsidiaries; providing bookkeeping and check processing services to Applicant's subsidiary banks; personal property leasing; and credit services to Applicant's subsidiary banks. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than July 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that

are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 17, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-18951 Filed 6-23-80; 8:45 am]

BILLING CODE 6210-01-M

Portales National BancShares, Inc.; Formation of Bank Holding Company

Portales National BancShares, Inc., Portales, New Mexico, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 98 percent or more of the voting shares of The Portales National Bank, Portales, New Mexico. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than July 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 18, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-18952 Filed 6-23-80; 8:45 am]

BILLING CODE 6210-01-M

Flagship Banks, Inc.; Acquisition of Bank Holding Company

Flagship Banks, Inc., Miami, Florida, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Florida Bancshares, Inc., Hollywood, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Flagship Banks, Inc., is also engaged in the following nonbank activities: trust activities; data processing; and underwriting insurance directly related to extensions of credit. In addition to the factors considered under section 3 of the Act (banking factors), the Board will

consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than July 18, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 18, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-18924 Filed 6-23-80; 8:45 am]

BILLING CODE 6210-01-M

Mountain Banks, Ltd.; Acquisition of Bank

Mountain Banks, Ltd., Denver, Colorado, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Louisville Mountain Bank, N.A., Boulder County, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than July 11, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, June 18, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-18925 Filed 6-23-80; 8:45 am]

BILLING CODE 6210-01-M

First Railroad & Banking Co. of Georgia; Proposed Acquisition of Blount Financial Services, Inc.

First Railroad & Banking Company of Georgia, Augusta, Georgia, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire through its wholly-owned subsidiary, CMC Group, Incorporated, Charlotte, North Carolina, certain receivables and assets of Blount Financial Services, Inc., Maryville, Tennessee.

Applicant states that the proposed subsidiary would engage in consumer financing, the underwriting of credit life and credit accident and health insurance and the sale as agent of credit related life, credit related accident and health and credit related property and casualty insurance. These activities would be performed from an office of Applicant's subsidiary in Maryville, Tennessee, and the geographic area to be served is Blount County, Tennessee. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 9, 1980.

Board of Governors of the Federal Reserve System, June 19, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-19015 Filed 6-23-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on June 16, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the *Federal Register* is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before July 14, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, N.W., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Civil Aeronautics Board

The CAB requests clearance of a new single-time letter to collect the following information from all truck and local service carriers for the year ended March 1977: (1) the amount of rental expense that would not have been reported had leases been capitalized; and (2) amortization expenses which would have been reported on line 7076, Schedules P-3 of Form 41 should such leases have been capitalized. The information will enable the CAB to discontinue its adjustment of current data by restating its base period for calculation of the "standard industry fare level" to reflect the fact that carriers now have all appropriate leases capitalized. The CAB estimates respondents will be approximately 17

carriers and that the reporting burden will average 8 hours for each carrier.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-18949 Filed 6-23-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Select Panel for the Promotion of Child Health; Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Select Panel for the Promotion of Child Health, established pursuant to section 211 of the Health Services and Centers Amendments of 1978 (Pub. L. 95-626), will meet on Friday and Saturday, June 27 and 28, at 9:00 a.m. at the Twin Bridges Marriott Hotel, Arlington, Virginia. The Panel has responsibility for the formulation of national goals with respect to the promotion of the health status of children and expectant mothers, the development of a comprehensive national plan for the achievement of these goals and otherwise promoting the health of children in the United States, and, the transmittal of a report to the Secretary and the Congress detailing the comprehensive national plan and recommendations for administrative, legislative, and other actions necessary to implement this plan and to otherwise promote the health of children in the United States. This meeting of the Panel will be devoted to a discussion of draft report chapters on organization of services and federal administrative arrangements. Memoranda on proposed recommendations for other sections of the Panel's report also will be reviewed. Meetings of the Panel are open for public observation.

Further information on the Panel may be obtained by contacting John A. Butler, Staff Director, Select Panel for the Promotion of Child Health, Room 711, Riviere Building, 1832 M Street, N.W., Washington, D.C. 20036, telephone (202) 634-4805.

Dated: June 11, 1980.

John A. Butler,

Staff Director, Select Panel for the Promotion of Child Health.

[FR Doc. 80-18926 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-95-M

Food and Drug Administration

[Docket No. 76N-0465]

Certain Barbiturate-Analgesic Combination Drugs for Oral Use; Final Order on Objections and Requests for Hearing**AGENCY:** Food and Drug Administration.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration denies a hearing and declares the combination drug products Butigetic and Indogestic unlawful. The products have been used for the relief of pain in various conditions. The agency finds the barbiturate-analgesic combination drugs are new drugs requiring new drug application approval for marketing.

EFFECTIVE DATE: July 7, 1980.**FOR FURTHER INFORMATION CONTACT:**

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 64) published in the *Federal Register* of March 14, 1972 (37 FR 5308), FDA announced its conclusions after evaluating a report from the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group, on the drug Algoston Tablets (NDA 8-734) containing sodium butabarbital 7.5 milligrams and acetaminophen 300 milligrams, formerly marketed by McNeil Laboratories, Inc., Camp Hill Rd., Fort Washington, PA 19034. The notice classified the drug as possibly effective and lacking substantial evidence of effectiveness for its various labeled indications. Holders of previously approved new drug applications (NDA's) and any person marketing any such drug without approval were given 6 months to obtain and submit, in a supplemental or original NDA, data to provide substantial evidence of effectiveness of those indications for which the drug was classified as possibly effective. The agency stated that at the end of the 6 months, it would evaluate the data to determine whether or not substantial evidence of effectiveness had been provided, and that, if it had not, procedures would be initiated to withdraw approval of the NDA under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)).

Because no data concerning the effectiveness of the drug were submitted, in a notice of opportunity for hearing (formerly Docket No. FDC-D-574) published in the *Federal Register* of

October 12, 1973 (38 FR 28312), FDA reclassified all of the indications for Algoston Tablets to lacking substantial evidence of effectiveness and proposed to issue an order withdrawing approval of the NDA. The agency invited McNeil and other interested persons to submit by November 12, 1973, a written appearance electing whether they would avail themselves of the opportunity for a hearing. Those requesting a hearing were instructed to state the reasons why approval of the NDA should not be withdrawn and to provide a well-organized and full factual analysis of the clinical and other investigational data that they were prepared to present in support of the requested hearing.

No hearing request was submitted by McNeil for Algoston Tablets, and approval of the NDA for this drug was withdrawn in a *Federal Register* notice of October 7, 1977 (42 FR 54618).

However, hearing requests were submitted in response to the October 12, 1973 notice for six related drug products:

1. Phenaphen Tablets and Capsules containing aspirin 200 milligrams, phenacetin 165 milligrams, and phenobarbital 15 milligrams; A. H. Robins Co., Inc., 1407 Cummings Dr., Richmond, VA 23220.

2. Fiorinal Tablets and Capsules containing butalbital 50 milligrams, aspirin 200 milligrams, phenacetin 130 milligrams, and caffeine 40 milligrams; Sandoz Pharmaceuticals, P.O. Box 11, Hanover, NJ 07936.

3. Butigetic Tablets (described below).

4. Indogestic Tablets (described below).

In a *Federal Register* notice of November 15, 1977 (42 FR 59115), FDA announced that, after a review of all available data, the new drug application (NDA 17-534) for Fiorinal Tablets and Capsules had been approved for a certain indication. Because this indication was the subject of the hearing request, the request was resolved by the approval of the NDA.

By letter of March 27, 1978, Robins withdrew its hearing request for Phenaphen Tablets and Capsules, because it had deleted the sedative component from its Phenaphen products. (Robins also markets Phenaphen with Codeine.) These products, which were reformulated to contain acetaminophen (Phenaphen) and acetaminophen with codeine (Phenaphen and Codeine), are not affected by this notice.

Consequently, the current notice pertains only to Butigetic Tablets and Indogestic Tablets.

I. The Drugs

1. Butigetic Tablets containing butabarbital sodium 15 milligrams,

acetaminophen 200 milligrams, phenacetin 150 milligrams, and caffeine 30 milligrams; McNeil Laboratories, Inc., Camp Hill Rd., Fort Washington, PA 19034.

2. Indogestic Tablets containing acetaminophen 200 milligrams; salicylamide 200 milligrams, and butabarbital 10 milligrams; Century Pharmaceuticals, Inc., 4553 Allisonville Rd., Indianapolis, IN 46205.

II. Recommended Uses

A. *Butigetic Tablets.* This drug is recommended in its labeling for the treatment of pain complicated by anxiety and/or tension.

B. *Indogestic Tablets.* This drug is recommended in its labeling for the treatment of pain, or for pain associated with apprehension or tension.

III. Data Submitted to Support Claims of Effectiveness

Neither McNeil Laboratories, Inc., nor Century Pharmaceuticals, Inc., has ever submitted, in response to the notice of opportunity for hearing, an analysis of any clinical or other investigational data or any other information to support the claims of effectiveness for Butigetic Tablets and Indogestic Tablets or to demonstrate that a genuine and substantial issue of fact about such effectiveness claims exists.

IV. Findings

The act places the burden of establishing the effectiveness of a drug upon the drug's manufacturer. 21 U.S.C. 355(e); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 617 (1973); *Upjohn Co. v. Finch*, 472 F.2d 944 (6th Cir. 1970). Claims of effectiveness must be supported by substantial evidence consisting of adequate and well-controlled investigations. 21 U.S.C. 355(d). FDA has set forth the elements of an adequate and well-controlled clinical investigation in 21 CFR 314.111(a)(5).

Thus, to justify a hearing in a proceeding in which FDA has given notice that substantial evidence of effectiveness of a drug is lacking, a hearing request must set forth specific data that demonstrate that there is a genuine and substantial issue of fact as to the drug's effectiveness. 21 CFR 314.200(c)(1). If the hearing request fails to contain such data, FDA can rule on the manufacturer's effectiveness claims without a formal hearing. *Weinberger v. Hynson, Westcott & Dunning, Inc.*, *supra*, 412 U.S. at 621.

In this matter, no evidence has been presented to show that McNeil's Butigetic Tablets and Century's Indogestic Tablets have the effects that they are represented to have under the

conditions of use prescribed, recommended, or suggested in their labeling. Since neither McNeil Laboratories, Inc., nor Century Pharmaceuticals, Inc., has offered any data or any information to demonstrate the existence of a genuine and substantial issue of fact requiring a hearing, their hearing requests are hereby denied.

The Federal Register notice of October 7, 1977 (42 FR 54618) represented final agency action on barbiturate-analgesic combinations containing 7.5 milligrams or less of sodium butabarbital (or equivalent amount of another barbiturate), an amount considered to be inadequate. That notice stated that the marketing conditions for barbiturate-analgesic combination products containing more than 7.5 milligrams of sodium butabarbital or an equivalent amount of other barbiturate would be the subject of a future Federal Register notice. Representatives of the agency have been unable to identify any data that are adequate to support the effectiveness claims of any barbiturate, except butalbital, in combination with aspirin, acetaminophen, or APC for any indication. Accordingly, the agency announces its finding that barbiturate-analgesic drugs, such as Butigetic and Indogesic, are new drugs as defined in section 201(p) of the act (21 U.S.C. 321(p)) and require the approval of a full new drug application. The application must contain, among other things, reports of studies that show that each active component contributes to the claimed effect of the drug (21 CFR 300.50). A full new drug application is not required only if the product is one for which the agency has made a finding that an abbreviated new drug application is acceptable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 76 Stat. 782 (21 U.S.C. 355(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the requests for a hearing for Butigetic Tablets and Indogesic Tablets are denied, and the drug products are hereby declared unlawful, effective July 7, 1980.

Dated: June 5, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-18910 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0062]

**Philadelphia Biologics Center, Inc.;
Final Order on Request for Hearing
Regarding Revocation of U.S. License
No. 139**

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs denies a hearing and revokes the establishment and product licenses issued to Philadelphia Biologics Center, Inc., for the manufacture of the biological product Source Plasma (Human). The licenses are revoked because the firm implemented significant changes in its manufacturing processes without either reporting them to, or obtaining prior approval from, the Director, Bureau of Biologics.

EFFECTIVE DATE: June 24, 1980.

FOR FURTHER INFORMATION CONTACT: Richard E. Fisher, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 24, 1979 (44 FR 24235), FDA issued a Notice of Opportunity for Hearing on its intent to revoke the establishment and product licenses (U.S. License No. 139) issued to Philadelphia Biologics Center, Inc. (hereinafter PBC), 1015 Chestnut St., Philadelphia, PA 19107, for the manufacture of Source Plasma (Human). The proposed revocation was based upon two separate and independent grounds: (1) The failure of the firm and its responsible management to comply with 21 CFR 601.12 and 640.75, in that significant changes in manufacturing methods were implemented without either reporting such changes to or obtaining prior approval from the Director, Bureau of Biologics (the Director); and (2) the failure of the firm and its responsible management to conform to the conditions established in its license and the requirements in 21 CFR Parts 600, 601, 610, and 640. The existence of either of these grounds is sufficient to warrant an order of revocation (21 CFR 601.5(b)(3) and 601.5(b)(4)).

On May 25, 1979, PBC filed a hearing request, and on June 26, 1979, it submitted data in support of its request.

PBC's hearing request has raised several factual issues whether certain procedures it used conformed with its license and with the Federal regulations and guidelines. However, the Commissioner finds that it is not necessary to reach these factual questions. Section 12.24(b)(4) (21 CFR 12.24(b)(4)) provides that a hearing will

not be granted on factual issues which are not determinative or controlling with respect to a proposed action. Since, as discussed below, the Commissioner concludes that there is no genuine and substantial issue of fact requiring a hearing on the issue of whether PBC has implemented changes in its manufacturing process without reporting them to, or obtaining the prior approval of, the Director, the Commissioner finds that this issue alone is controlling and is sufficient cause for revocation.

I. Statutory Scheme

Under section 351(a) of the Public Health Service Act (the act) (42 U.S.C. 262(a)), a biological product cannot be sold, or offered for sale in interstate or foreign commerce, unless it has been manufactured and prepared by a licensed manufacturer. Under the act, a manufacturer obtains one establishment license and separate licenses for each product it prepares. (See 21 CFR 601.1 and 601.2.) The authority to issue such licenses rests with the Director, Deputy Director, and Associate Director for Compliance of the Bureau of Biologics (21 CFR 5.1(a)(5) and 5.68).

The act identifies the products for which a license must be obtained (42 U.S.C. 262(a)). As a result of an amendment passed in 1970, blood products, such as human plasma, are explicitly included in the coverage of the act (Pub. L. 91-515, 84 Stat. 1308 (October 30, 1970)). The purpose of the act is to ensure the purity of these very special kinds of therapeutic substances. (See H.R. Rep. No. 2713, 57th Cong., 1st Sess. 3 (1902).)

Section 351(d) of the act (42 U.S.C. 262(d)), authorizes the promulgation of regulatory standards "designed to insure the continued safety, purity, and potency" of biological products. An establishment intending to manufacture and ship such biological products may obtain a license "only upon a showing" that the establishment and the products meet such standards (Id). Finally, this section provides that product and establishment licenses "shall be issued, suspended, and revoked as prescribed by regulations * * *."

Pursuant to this grant of statutory authority, regulations concerning establishment standards, licensing, revocation, suspension, and general and specific product standards have been promulgated and are found at 21 CFR Parts 600, 601, 610, and 620-680. All manufacturers are required to comply with these regulatory standards as a condition of obtaining and keeping their licenses. Failure to adhere to these standards can result in revocation of the

establishment and product licenses (21 CFR 601.5).

II. The Product

In the *Federal Register* of August 26, 1972 (37 FR 17419), FDA announced that all establishments engaged in interstate shipment of human plasma were subject to the licensing provisions of section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), and proposed standards for the collection, testing, and processing of the product to be called Source Plasma (Human). In the *Federal Register* of July 20, 1973 (38 FR 19362), FDA promulgated regulations (frequently referred to as "additional standards") for Source Plasma (Human) (21 CFR 640.60, et seq.). The licensed product was defined as the plasma collected by plasmapheresis which would be used as source material for further manufacture into blood derivative products intended for injection in man. Plasmapheresis is a procedure in which whole blood is removed from a donor, the plasma is separated from the formed elements, and at least the red blood cells are returned to the donor (21 CFR 640.65). One of the major purposes for the promulgation of these regulations was to establish standards to protect the plasmapheresis donor. (See generally 39 FR 26161; July 17, 1974 and 41 FR 10762; March 12, 1976.)

In the *Federal Register* of July 17, 1974 (39 FR 26161), FDA proposed to amend the Source Plasma (Human) regulations to include that plasma collected by plasmapheresis intended for use in manufacturing noninjectable products, commonly referred to as "clinical chemistry controls" or "diagnostic reagents." Additionally, the agency proposed numerous amendments to clarify and strengthen the existing Source Plasma (Human) regulations in light of inspectional and other regulatory experience. In the preamble, the agency reiterated the importance of the donor protection provisions in the plasma-licensing scheme. (See 39 FR 26161; July 17, 1974.)

The July 17, 1974 proposal was finalized in the *Federal Register* of March 12, 1976 (41 FR 10762). Thus, licensed Source Plasma (Human) now includes the fluid portion of human blood collected by plasmapheresis and intended as source material for injectable and noninjectable products (21 CFR 640.60).

III. The License

On November 30, 1939, PBC's predecessor company, Philadelphia Serum Exchange, was issued U.S.

License No. 139 for its establishment and various biological products.

On February 11, 1975, PBC filed an amendment to its Establishment License to include the manufacture of Source Plasma (Human). On the same day PBC also submitted a Product License Application for Source Plasma (Human) as defined at that time (for further manufacturing use in injectable products). On February 18, 1975, Establishment Application Reference No. 75-67 and Source Plasma (Human) Product License Application Reference No. 75-68 were assigned to PBC's February 11, 1975 submissions by the Bureau.

The firm requested the issuance of a license to manufacture Source Plasma (Human) by drawing plasma from nonimmunized donors and from donors who had been immunized with tetanus toxoid. Additionally, on February 20, 1975, PBC filed a proposed amendment to its Source Plasma (Human) Application (Reference No. 75-68), to include a procedure for collecting the plasma from donors who had been immunized with human red blood cells. Due to a variety of deficiencies in these submissions, including incomplete or insufficient information, inaccurate labeling, and incorrect or incomplete tetanus and red blood cell immunization procedures, approval was not granted.

On April 22, 1977, PBC amended its Source Plasma (Human) Product License Application to include the procedure of drawing plasma from donors reactive to a test for the presence of the hepatitis B surface antigen (HB_sAg). By letter dated July 26, 1977, Reference No. 77-300 was assigned to this application.

On September 14, 1977, after correspondence between PBC and the Bureau concerning the necessary procedures and data required for license approval, PBC's establishment license was amended to include the manufacture of Source Plasma (Human), and the firm was issued a product license. This license permitted the firm to ship in interstate and foreign commerce Source Plasma (Human) collected in anticoagulant sodium citrate solution and manufactured by the following procedures only:

1. For further manufacturing into noninjectable products collected from donors who had not been immunized; and
2. For further manufacturing into injectable products collected from donors who had not been immunized or donors who had been immunized with tetanus toxoid.

Because of the expansion in the definition of Source Plasma (Human) by the final order of March 12, 1976 (41 FR

10762), the approved license included both injectable and noninjectable further manufacturing uses for the product.

IV. Basis for Revocation

Pursuant to 21 CFR 601.5(b)(3) a license may be revoked if a manufacturer has failed to report a manufacturing change as required by 21 CFR 601.12 in the production of any biological product for which a license has been issued. Section 601.12 (21 CFR 601.12) provides that any important changes in manufacturing methods must be reported to the Director 30 days in advance of implementation, and such changes can "not become effective until notification of acceptance is received from the Director, Bureau of Biologics." Additionally, 21 CFR 640.75 of the Source Plasma (Human) regulations prohibits a licensed manufacturer from collecting or processing source Plasma (Human) "at variance with one or more of the requirements of this subpart, including the licensing requirements * * *", without prior approval for such alternate procedures from the Director.

These regulations concerning changes in manufacturing procedures reflect the basic prelicensing scheme established under the act. FDA approves a license based upon the representations in the license application. Approval is conditioned upon the firm's continued operation in accordance with the procedures set forth in the application. If a licensee changes those procedures, FDA's approval necessarily ceases and the licensee must submit the new procedures for approval. The licensing system would be meaningless if a licensee were free to indiscriminately alter its procedures after its initial approval.

The FDA Philadelphia District Office conducted an inspection of PBC from December 19, 1978 through January 8, 1979. This inspection revealed, among other things, that the firm was drawing plasma from donors immunized with human red blood cells and from HB_sAg-reactive donors. These procedures had not been approved by the director. The inspection also revealed that PBC was drawing plasma from donors stricken with the hereditary bleeding disorder, hemophilia, for the purpose of obtaining factor-deficient plasma or plasma containing the antibody to HB_sAg. These procedures had neither been reported to nor approved by the director, as required by §§ 601.5(b)(3), 601.12, and 640.75 (21 CFR 601.5(b)(3), 601.12, 640.75). The Source Plasma (Human) being manufactured by these unreported and unapproved methods was being shipped labeled as the licensed (i.e.,

approved) product Source Plasma (Human).

Since the existence of these violations constitutes grounds for revocation, this proceeding was commenced.

V. PBC's Response

PBC contests both grounds for revocation set forth in the April 1979 notice: (1) The failure of the firm and its responsible management to report to, and to obtain prior approval from, the Director before making significant changes in its manufacturing processes in violation of 21 CFR 601.12 and 640.75, and (2) the failure of the firm and its responsible management to conform to the conditions established in its license and in the regulations. Because the Commissioner finds that the issue of whether PBC violated 21 CFR 601.12 and 640.75 is controlling (see Part VIII below), the Commissioner need not consider nor rule on the other issue.

On the issue of whether the firm had made changes in its manufacturing methods without either reporting those changes to or obtaining approval of them from the Director, PBC asserts that it had reasonably assumed that its manufacturing changes had been approved.

PBC does not claim that it was not manufacturing Source Plasma (Human) from donors immunized with human red blood cells, from HB_s Ag-reactive donors, and from hemophilic donors, or that it was not shipping this plasma, labeled as the license product Source Plasma (Human). It also does not deny that it never received specific notification of acceptance of the implementation of the changes from the Director. Instead, PBC cites a series of documents and claims that those documents justified its belief that its changes in manufacturing methods had been approved. Therefore, it claims that it did not violate 21 CFR 601.12 and 640.75, and that its license is not subject to revocation under 21 CFR 601.5(b)(3).

To understand PBC's claim, it is necessary to describe the six documents relied upon by PBC.

1. On April 20, 1977, the Director issued a memorandum to all licensed manufacturers stating that the Bureau would no longer knowledge receipt of manufacturers' response to Bureau Information or Regulatory Letters, unless clarification or corrective action was necessary. (Information and Regulatory Letters are issued by the agency after an FDA inspection has revealed deficiencies in the firm's practices. The letters express FDA's expectation that prompt correction of the violative conditions will be undertaken by the firm.) This

memorandum also stated that " * * * corrective actions submitted to the Bureau are to be considered acceptable, unless you are otherwise notified."

2. PBC's initial Product License Application to manufacture Source Plasma (Human) which was filed on February 11, 1975 (Reference No. 75-68).

3. PBC's amendment to its Product License Application which was filed on April 22, 1977 (Reference No. 77-300).

4. By letter dated September 14, 1977, PBC was issued a license to manufacture Source Plasma (Human) only from donors who had not been immunized or from donors who had been immunized with tetanus toxoid. That letter contains the following statements:

* * * * *

Other procedures submitted under the above Reference Numbers, which have not been accepted, will be addressed in a separate letter.

* * * * *

If, in the future, you wish to prepare Source Plasma (Human) other than by procedures currently under review or as specified above, it will be necessary to file additional amendments to your product license.

5. A letter dated September 14, 1977 was issued by the Bureau to PBC which stated, in part, that several procedures, including red blood cell immunizations, "submitted under Reference Number 75-68 can not be approved at this time because additional revisions or clarification is still needed * * *." The letter then detailed the required revisions and requested specific explanations on certain procedures.

6. On September 19, 1977, PBC sent the Bureau a revised set of procedures for red blood cell immunizations. Although the Bureau has no record of receiving this submission, it does not contest that PBC mailed it. PBC does not deny that it never received a response from the Bureau as to the adequacy of these revised procedures or their acceptance by the Director as approved amendments to PBC's Source Plasma (Human) license.

Based upon the foregoing documents, PBC makes the following arguments in support of its claim that it reasonably assumed that its manufacturing changes had been approved:

First, the Bureau did not respond to PBC's September 19, 1977 submission. In light of the Director's memorandum of April 20, 1977, to the effect that corrections were to be considered acceptable unless a firm was notified otherwise, PBC began to manufacture and ship Source Plasma (Human) from the donors who had been immunized with human red blood cells (PBC Response, p. 1).

Second, PBC assumed the language quoted above in the Bureau of Biologics' license approval letter of September 14, 1977 meant that it could commence to perform any procedures which were under review by the Bureau at that time. Since PBC's procedures for manufacturing Source Plasma (Human) from HB_s Ag-reactive donors were under review, PBC began to manufacture and ship Source Plasma (Human) from HB_s Ag-reactive donors (PBC Response, pp. 3-4).

VI. PBC's Response Fails To Create a Genuine and Substantial Issue of Fact

As the Commissioner has stated, he finds the issue of whether PBC violated 21 CFR 601.12 and 640.75 to be controlling in this matter. Under 21 CFR 12.24(b)(1), the agency need not hold a formal evidentiary hearing on this issue unless there are genuine and substantial questions of fact for resolution. FDA's authority to issue an administrative summary judgment in lieu of a formal hearing in such circumstances has been upheld by the Supreme Court. *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 621 (1973); *Weinberger v. Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973). See *Masti-Kure Products Co., Inc. v. Califano*, 587 F.2d 1099 (D.C. Cir. 1978); *Holland-Rantos Co., Inc. v. U.S. Dept. of HEW*, 587 F.2d 1173 (D.C. Cir. 1978).

PBC's response does not create a genuine and substantial issue of fact. PBC has not denied that it had implemented the methods in question to manufacture Source Plasma (Human); that it did not receive specific approval to use these methods from the Director; and that it was shipping this plasma labeled as the license product Source Plasma (Human). In addition, no factual questions have been raised about the existence or the contents of the documents outlined above and relied upon by PBC.

There is an issue in this proceeding concerning whether the documents relied upon by PBC provided a reasonable basis for PBC's conclusion that the changes it made in its manufacturing methods had been approved by FDA, and whether, as a result, FDA is now estopped from revoking PBC's product and establishment licenses.

It will settled that the principle of estoppel cannot be asserted against the government in its protection of a public interest unless the government's conduct was so egregious as to compel redress. *United States Immigration and Naturalization Service v. Hibi*, 414 U.S. 5, 8 (1973); *Bentex Pharmaceuticals, Inc. v. Richardson*, 463 F.2d 363, 368 N.17

(4th Cir. 1972) *rev'd on other grounds*, 412 U.S. 645 (1973); *AMP v. Gardner*, 275 F. Supp. 410, 412 n.1 (S.D. N.Y. 1967), *aff'd*, 389 F.2d 825, 826 n.1 (2d Cir. 1968), *cert. denied*, 393 U.S. 825. As will be discussed below, there was nothing unfair in the Bureau's correspondence with PBC. Furthermore, whenever, as here, the facts upon which such an estoppel claim is based are not in dispute, the question of whether those facts or the inferences drawn from them constitute an estoppel is a question of law. *United States v. Millsap*, 208 F. Supp. 511, 516 (D. Wy. 1962). See also *Utah Power & Light v. United States*, 243 U.S. 389 (1917); *AMP Inc. v. Gardner*, 389 F.2d 825, 826 n.1 (2d Cir. 1968). A hearing will not be granted on questions of law or policy (21 CFR 12.24(b)(1)).

The issues raised by PBC's objections do not warrant a hearing. Accordingly, PBC's request for a hearing is denied pursuant to 21 CFR 12.28.

VII. PBC Could Not Reasonably Assume That Its Change in Manufacturing Methods Had Been Approved by the Bureau of Biologics

PBC has admitted that it changed its methods of manufacturing Source Plasma (Human). It argues, however, that, based upon the documents it cites, it reasonably assumed that these changes had been approved. The Commissioner finds, as a matter of law, that those documents do not support that assumption.

The April 20, 1977 memorandum is specifically addressed to the acknowledgment of the receipt of corrective actions submitted by a firm to the Bureau in response to Information or Regulatory Letters issued by FDA. Information and Regulatory Letters have never been used as part of the licensure process by which changes in manufacturing methods are approved by the Director. Therefore, PBC's reliance upon the April 20, 1977 memorandum is neither supportable nor reasonable.

The September 14, 1977 letter from the Bureau approving PBC's license application to manufacture Source Plasma (Human) was not and could not reasonably be construed as a blanket approval. It was limited to only the two procedures which were detailed in the letter. It would be anomalous to construe a letter which on its face is limited to two procedures as granting a general authorization. Moreover, the letter clearly stated that the other PBC procedures had not been accepted. Moreover, the September 14, 1977 letter stated that the other procedures, including red blood cell immunizations, "have not been accepted" at that time.

PBC also claims that it assumed that the September 14, 1977 approval letter authorized it to manufacture Source Plasma (Human) from HB_sAg-reactive donors (PBC Response, pp. 3-4). The record does not support this claim. On August 30, 1977, the Bureau sent PBC a letter stating that it could not approve the license amendment to include plasmapheresis of donors reactive to HB_sAg testing until further information was provided. PBC did not respond to the August 30, 1977 letter until January 25, 1978 (4 months after the September 14, 1977 letter), when it sent a letter to the Bureau in which it conceded that no approval had yet been granted: "We are hopeful that this information will facilitate your approval of this amendment without the need of additional correspondence." Thus, it is clear that as late as January 25, 1978, PBC understood that its use of HB_sAg donors had not been approved. In addition, on March 20, 1978, the Bureau again requested additional data for PBC's proposed amendment covering HB_sAg-reactive donors. PBC did not respond to this request until January 11, 1979, 3 days after the conclusion of the FDA inspection which precipitated this proceeding.

PBC does not make any argument to support its manufacture of Source Plasma (Human) from hemophilic donors for the purpose of obtaining factor-deficient plasma or plasma containing the antibody to HB_sAg. No license amendment proposing that this procedure be approved has ever been submitted to the Bureau by PBC.

Therefore, there is no basis for PBC's claim that it was justified in assuming that the Director had approved three significant changes in manufacturing methods.

Based on the foregoing, the Commissioner finds that PBC failed to report manufacturing changes to, or to receive approval for, such changes from the Director, Bureau of Biologics, in violation of 21 CFR 601.12 and 640.75.

VIII. Summary

The Commissioner finds that the failure of PBC to report changes in its manufacturing methods and to obtain approval of the Director before it changed its manufacturing methods to be such a significant violation of the regulations that he can revoke PBC's license without considering the other proposed ground for revocation set forth in the April 1979 notice. The Commissioner does note, however, that PBC has admitted some of the allegations contained in this second ground. For example, PBC admits that donors whose protein compositions

were not within normal limits were not removed from the program until these values returned to normal, as required by 21 CFR 640.65(b)(2)(i). It also admits that accumulated laboratory data and collection records were not always reviewed by a physician within 21 days after a test sample was drawn to determine whether the donor would continue in the plasmapheresis program, as also required by 21 CFR 640.65(b)(2)(i). (See PBC's Response above.)

PBC's actions created a double threat to the health and safety of the public. First, since PBC's Source Plasma (Human) was represented as the licensed product, purchasers were led to believe that the safety, purity, and potency of the product had been assured by the licensing process. It had not been. Second, donors were plasmapheresed by methods which had not been approved to protect donor safety. Changing from normal, health donors to donors reactive to HB_sAg third generation testing, for example, requires significant modifications in the techniques and intervals of the donations. Special guidelines have been made available to the public (see 42 FR 25381; May 17, 1977) regarding the plasmapheresis of such donors because of the increased risk involved in such programs. Written approval from the Director is required to ensure that the establishment has the capacity and ability to perform this type of plasmapheresis on a class of donor more susceptible to adverse reaction and infection. Similar dangers are present in the plasmapheresis of donors immunized with human red blood cells and hemophilic donors.

In addition, PBC's action of effecting changes in its manufacturing methods before it received specific approval for these changes from the Director constitutes a total disregard for the statutory and regulatory prelicensing clearance system for biological products.

The Commissioner finds that the threat to the health and safety of the public created by PBC's violation of 21 CFR 601.12 and 640.75 warrants revocation of PBC's establishment and product license (U.S. License No. 139).

IX. Findings

PBC has failed to demonstrate the existence of a genuine and substantial issue of fact which requires that a hearing be held. PBC implemented significant changes in its manufacturing processes without either reporting them to or receiving prior approval from the Director, Bureau of Biologics, in violation of 21 CFR 601.12 and 640.75.

This violation constitutes grounds for revoking PBC's product and establishment licenses under 21 CFR 601.5(b)(3).

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)), and under the authority delegated to the Commissioner (21 CFR 5.1), the request for a hearing is denied, and the establishment and product licenses (U.S. License No. 139) issued to Philadelphia Biologics Center, Inc., are hereby revoked.

Dated: June 4, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-18911 Filed 6-23-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Menominee Indian Reservation, Wis.; Ordinance Regulating the Possession, Use, Consumption, and Sale of Alcoholic Beverages

June 13, 1980.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 18 U.S.C. 1161 (1976). I certify that the following Resolution and Ordinance relating to the application of the Federal Indian Liquor Laws on the Menominee Indian Reservation, Wisconsin, was adopted on October 11, 1979, and amended on December 20, 1979, by the Menominee Tribal Legislature which has jurisdiction over the area of Indian Country included in the Resolution and Ordinance, reading as follows:

Ralph R. Reeser,

Acting Deputy Assistant Secretary, Indian Affairs.

Menominee Nation, Menominee Tribal Legislature Resolution 79-58

Whereas, the Menominee Tribal Legislature is the duly constituted governing body of the Menominee Nation (AKA-Menominee Indian Tribe of Wisconsin) by the authority of the Menominee Constitution and By Laws:

Whereas, the Menominee Legislature has the duty and responsibility of regulating the possession, use, consumption, and sale of alcoholic beverages within the exterior boundaries of the Menominee Nation;

Whereas, the Menominee Tribal legislature saw a dire need for a licensing procedure and did adopt a sixty (60) day Emergency Alcoholic Beverage Ordinance on October 11, 1979;

Now therefore be it resolved, that the Menominee Tribal Legislature, in behalf of

the Menominee Nation, does adopt the attached Alcoholic Beverage Control Ordinance, No. 79-31.

Certification

We, the undersigned, do hereby certify that the foregoing Resolution No. 79-58 was adopted at a Regular Meeting of the Menominee Tribal Legislature, held on December 6, 1979, a quorum present, by vote of 6 in favor; none opposed, 1 absent, and that said Resolution has not been amended or rescinded in any way.

Gordon Dickie, Sr.

Chairman, Menominee Indian Tribe of Wisconsin.

Lucille R. Chapman,

Secretary, Menominee Indian Tribe of Wisconsin.

Dated: December 6, 1979.

Menominee Nation Alcoholic Beverage Control (Amended) Ordinance No. 79-13

Be It Ordained by the Legislature of the Menominee Indian Tribe of Wisconsin

Nature of Ordinance

1. *Nature of this Ordinance.* It is necessary to enact this ordinance because at this time the Menominee Interim Law and Order Code does not provide for policies regulating the sale of alcoholic beverages. Thus, action is required to protect the welfare, peace, safety and property of the Menominee Nation and to promote Menominee self-government.

2. This ordinance shall allow for the issuance of bartenders license, alcoholic beverage sales license, and special permits.

3. *Administration and Records Maintained.* The Menominee Tribal Legislature shall designate the responsibility for the administration and records keeping of all alcoholic beverages license and special permits. All information pertaining to license and special permits shall be open for public inspection in accordance with the procedures adopted by the Legislature.

Retail Sales License

1. *Applicants.* Anyone owning, renting or leasing in name a commercial type establishment.

2. *License.* a. Only commercial type establishments, properly equipped and in proper condition shall be issued permits.

b. Proper establishments in areas considered to be commercial types in nature.

3. *Tavern(s).* A License shall not be issued to more than:

a. One (1) establishment in Neopit, and

b. No more than three (3) establishments, in Keshena, and

c. No more than two (2) establishments in rural outlying areas.

4. *Packaged goods.* A license shall not be issued to more than:

a. Three (3) establishments in Neopit, and

b. No more than six (6) establishments in Keshena, and

c. No more than two (2) establishments in rural outlying areas.

5. *Tavern hours.* a. Across the bar sales including packaged goods shall be prohibited from 2:00 a.m. to 8:00 a.m. daily.

b. Effective with the change of daylight savings time across the bar sales including

packaged goods shall be prohibited from 1:00 a.m. to 8:00 a.m. daily.

6. *Establishments Other Than Taverns.* a. Sales of packaged goods may be permitted from 8:00 a.m. to 9:00 p.m. daily.

7. *All Sales.* a. Shall be prohibited to individuals under the age of eighteen (18) years of age.

b. Shall be prohibited to individuals known or believed to be purchasing for individuals under the age of eighteen (18).

c. Shall be prohibited to individuals known or believed to be intoxicated.

8. *Fees.* All fees shall be annually paid in advance. License and permits may be obtained at the designated office, upstairs in the Tribal Courthouse.

a. *Taverns:*

Malt Beverage license—96.00 per year

Liquor License—96.00 per year

b. *Other Type Establishments:*

Malt beverage license—12.00 per year

Liquor License—96.00 per year

c. *Special Individual Permits:*

Malt beverage permits—5.00 per day

Liquor permits—5.00 per day

d. Taxes or fees of the State of Wisconsin shall not be applicable.

e. The Menominee Tribal Legislature shall have the authority to enact a Tribal Tax by Ordinance.

f. Effective date, January 1, 1980.

Wholesale License

1. *Applicants.* Anyone owning, renting or leasing in name a commercial type business.

2. *License.* Only commercial type establishments in proper condition and properly equipped shall receive license.

3. *Depot.* License shall not be issued to more than one (1) establishment within the exterior boundaries of the Menominee Nation.

4. *Taxes.* Taxes of the State of Wisconsin shall not be applicable.

Rules

1. *Bartender License* will be issued upon a doctor's physical certification which meet health standards, for a \$5.00 fee.

2. *Minors* shall not be permitted on tavern premises without being accompanied by a parent or legal guardian.

3. *Violation of any provision of this ordinance* shall constitute:

a. Suspension or cancellation of the License and/or,

b. A fine not to exceed \$100.00.

Certification

We, the undersigned, do hereby certify that the foregoing Ordinance 70-31 was adopted at a regular meeting of the Menominee Tribal Legislature, held on December 20, 1979 a quorum present, by a vote of 7 for and 1 against.

The undersigned also certify that the above Ordinance has been posted in accordance

with the Constitution and By Laws of the Menominee Indian Tribe of Wisconsin.

Gordon Dickie, Sr.,
Chairman, Menominee Indian Tribe of Wisconsin.

Lucille B. Chapman,
Secretary, Menominee Indian Tribe of Wisconsin.

Dated: December 20, 1979.

[FR Doc. 80-18973 Filed 6-23-80; 8:45 am]

BILLING CODE 4310-02-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: National Biocentric, Inc., St. Paul, MN 55113; PRT 2-3772.

The applicant requests a permit to capture live specimens of Higgin's eye pearly mussel (*Lampsilis higginsii*) for determining the presence and distribution of the species in the Guttenberg, Iowa region of the Mississippi River. After identification all mussels are to be returned to the site of capture; however, the applicants request taking one voucher specimen.

Applicant: Jacksonville Zoological Park, Jacksonville, FL 32218; PRT 2-6451.

The applicant requests a permit to purchase in interstate commerce two captive-bred Nene or Hawaiian geese (*Branta sandvicensis*) from the St. Catherine's Survival Center, Georgia for enhancement of propagation and survival.

Applicant: Charles Sivelle, Dix Hills, NY 11746; PRT 2-6647.

The applicant requests a permit to import in foreign commerce eight captive-bred Palawan peacock pheasants (*Polyplectron emphanum*) from Dr. K. C. Searle, Hong Kong for enhancement of propagation and survival.

Applicant: James Ford Bell, Museum of Natural History, University of Minnesota, Minneapolis, MN 55455; PRT 2-6655.

The applicant requests a permit to export to and reimport from other scientific institutions, museum specimens of endangered and threatened species already accessioned at the Bell Museum for scientific research.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applicants are available to the public during normal

business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish & Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications on or before July 24, 1980, by submitting written data, views, or arguments to the Director at the above address.

Dated: June 19, 1980.

Donald G. Donahoo,
Federal Wildlife Permit Office, Fish & Wildlife Service.

[FR Doc. 80-19021 Filed 6-23-80; 8:45 am]

BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before June 17, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by July 9, 1980.

Ronald M. Greenberg,
Acting Chief, National Register of Historic Places.

ARIZONA

Maricopa County
Tempe, Vienna Bakery, 415 S. Mill Ave.

[FR Doc. 80-18811 Filed 6-23-80; 8:45 am]

BILLING CODE 4310-03-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before June 13, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments should be submitted by July 9, 1980.

Ronald M. Greenberg,
Acting Chief, National Register of Historic Places.

ARIZONA

Cochise County
Dos Cabezas vicinity, Faraway Ranch Historic District, AZ 181

CALIFORNIA

Alameda County
Berkeley, Anna Head School for Girls, 2538 Channing Way
San Bernardino County
Ontario, Frankish Building, 200 S. Euclid Ave.

DISTRICT OF COLUMBIA

Washington
Lightship Chesapeake, East Potomac Park

INDIANA

Elkhart County
Elkhart, Green Block, 109-115 E. Lexington
LaGrange County
LaGrange, LaGrange County Courthouse, Detroit St.
Marion County
Indianapolis, Hotel Washington, 32 E. Washington St.
Indianapolis Walker, Madame C. J., Building, 617 Indiana Ave.
Indianapolis, West Washington Street Pumping Station, 801 W. Washington St.

Montgomery County
Ladoga vicinity, Ashby, SW of Ladoga on SR 350E

Vanderburgh County
Evansville, Garvin Park, N. Main St. and Morgan Ave.

MISSISSIPPI

Adams County
Natchez, Cemetery Bluff District, Cemetery Rd.

Forrest County
Hattiesburg vicinity, Tall Pines, S of Hattiesburg on Memorial Dr.

Hinds County
Jackson, Farish Street Neighborhood Historic District (boundary increase)

NEW MEXICO

Bernalillo County
Albuquerque vicinity, Old Los Padillas School, S of Albuquerque at 7325 Isleta Blvd., SW.

OKLAHOMA

Atoka County
Atoka, Madary, H. I., House, 237 N. Ohio Ave.
Atoka, Masonic Temple, 301 Court St.
Atoka, Old Atoka State Bank, Court and Ohio Sts.
Atoka, Zweigel Hardware Store Building, 405 and 407 Court St.

Canadian County

El Reno, Carnegie Library, 215 E. Wade St.

Comanche County

Lawton vicinity, Mathewson House Site and Trading Post

McCurtain County

Idabel vicinity, America, E of Idabel

Oklahoma County

Oklahoma City, Bath-Melton Building, 20 W. Main St.

Oklahoma City, Plaza Court, 1100 Classen Dr.

Payne County

Stillwater, Bacon, Franklin N., House, 1116 S. Chester St.

Stillwater, Frick, William, House, 1016 S. West St.

Pushmataha County

Antlers, Sumner, W. N., House, 801 N. High St.

Sequoyah County

Marble City, Citizen's State Bank, Seminole and Main Sts.

Short vicinity, Lee Creek District

Tulsa County

Tulsa, Greenwood Historic District, Greenwood Ave. and Archer St.

SOUTH CAROLINA**Charleston County**

Lincolnton, Williams Graded School, Pinckney St.

York County

Rock Hill, McCorkle-Fewell-Long House, 639 College Ave.

TENNESSEE**Davidson County**

Nashville, Broadway Historic District, Broadway between 2nd and 5th Aves.

Gibson County

Humboldt, Senter-Rooks House, 2227 Main St.

Knox County

Knoxville, Johnson, Andrew, Hotel, 912 S. Gay St.

Shelby County

Memphis, Elam Homestead, 1428 Fox St.
Memphis, First Congregational Church and Parish House, 234 S. Watkins St.
Memphis, Saunders, Clarence, House, 3050 Central Ave.

TEXAS**Bexar County**

San Antonio, Staacke Brothers Building, 309 E. Commerce St.

Potter County

Amarillo, Shelton-Houghton House, 1700 Polk St.

UTAH**Washington County**

Washington, Washington Relief Society Hall, 100 West and Telegraph Sts.

VIRGINIA**Albemarle County**

Esmont vicinity, Mountain Grove, NW of Esmont on VA 717

Botetourt County

Daleville vicinity, Nininger's Mill, S of Daleville

Fincastle vicinity, Breckinridge Mill, W of Fincastle on VA 600

Charles City County

Charles City vicinity, Cary, Lott, Birth Site, NW of Charles City on VA 602

Lynchburg (independent city)

Federal Hill Historic District, Roughly bounded by 8th, 12, Harrison and Polk Sts.

Nelson County

Wintergreen vicinity, River Bluff, S of Wintergreen on VA 151

Prince William County

Manassas vicinity, Ben Lomona, NW of Manassas, 10914 Sudley Manor Dr.

[FR Doc. 80-18599 Filed 6-23-80; 8:45 am]

BILLING CODE 4310-03-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29352]

**Central of Georgia Railroad Co.—
Petition for Exemption From the Filing
of an Abandonment Application**

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Central of Georgia Railroad Company (Central) owns a line of railroad running a distance of 6.3 miles from Relay, GA to Chambers, GA. No traffic has originated or terminated on the line since 1976. The line is not used by Central as it has alternate trackage rights over a line of railroad of the Southern Railway Company over which it handles overhead or bridge traffic. Therefore, Central filed a petition on May 13, 1980, for exemption from 49 U.S.C. 10903-10906 which requires issuance of a certificate by the Interstate Commerce Commission prior to abandonment of rail lines subject to the Commission's jurisdiction. In the alternative Central seeks a waiver of certain requirements for the filing of applications to abandon in the event the exemption is denied.

DATES: Comments must be received on or before: July 24, 1980.

ADDRESS: Send an original and 12 copies of all comments to: Section of Finance, Room 5414, Interstate Commerce Commission, 12th St. and Constitution Ave., N.W., Washington, D.C. 20423. All written statements will be available for

public inspection during regular business hours at the same address. Comments should make reference to the docket number (Finance Docket No. 29352).

FOR FURTHER INFORMATION CONTACT: Richard Kelly (202) 275-7564.

SUPPLEMENTARY INFORMATION:

By petition filed May 13, 1980, Central of Georgia Railroad Company (Central), requests an exemption pursuant to 49 U.S.C. 10505(b) from the provisions of 49 U.S.C. 10903-10906, (or in the alternative a waiver of the requirements pertaining to rail abandonments found at 49 CFR Parts 1106, 1108 and 1121) with respect to a proposed abandonment of a segment of its line of railroad. This rail line extends from milepost C358.2 at Relay, GA, to milepost C364.5 at Chambers, GA, a distance of 6.3 miles, located in northwest Georgia. At Relay the segment connects with Central's line which runs to Macon, GA, and at Chambers the segment connects with the line of railroad of Southern Railway Company which runs to Atlanta, GA.

No stations are located on the line and the communities of Relay, Reeseburg, and Chambers which are located on the line, have no recorded population. With the exception of 3 shipments moving from Relay, (one each in the years 1970, 1971, and 1976), no traffic has originated or terminated on the line during the past decade. No requests for service on the line have been received. The line now is used for the operating convenience of Central, occasionally for setting out or storing cars at both ends of the line segment.

By means of trackage rights over the line of Southern Railway Company (Central's corporate parent) authorized pursuant to decision of the Commission in Finance Docket No. 23829, served December 30, 1965, Central has an alternate continuous line of railroad without the necessity of use of its line segment contemplated for abandonment. Hence, the line segment from and to which no traffic is forwarded or received is rendered superfluous.

The Exemption

Abandonment of any part of a railroad line by a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission may only be effected if the Commission finds that the present and future public convenience and necessity require or permit the abandonment. See 49 U.S.C. 10903. Section 10904 sets forth the filing requirements and procedure for applications to abandon.

The Commission under 49 U.S.C. 10505 may exempt a person, transaction

or service in any matter related to rail carriers because of the limited scope of the transaction or service whenever the Commission finds that the application of a provision over which it has jurisdiction (1) is not necessary to carry out the transportation policy of 49 U.S.C. 10101, (2) would be an unreasonable burden on a person or on interstate or foreign commerce; and (3) would serve little or no useful public purpose.

Petitioner states that the transaction is of limited scope with no effect on service; that there are no issues affecting transportation policy or the protection of inherent advantages of each transportation mode; and that the very limited public effect of the abandonment cannot justify imposition of the burden of the preparation of an application in accordance with the procedural requirements. Petitioner further states that as no rail service will be lost, no rail operations will be changed and no rail employees will be affected, no useful public purpose would be served through preparation and evaluation of an abandonment application.

Petitioner also requests that if the Commission should deny the exemption, the following regulations governing the filing of abandonment applications be waived: 49 CFR 1121.32(b), *Condition of Properties*; 49 CFR 1121.32(c), *Service Provided*; 49 CFR 1121.32(d), *Revenue and Cost Data*; 49 CFR 1121.32(e) (2), (3), and (4), *Rural and community impact*; 49 CFR 1121.32(f), *Environmental Impact*; and 49 CFR 1121.32(h), *Financial Statements*.

Petitioner argues that as no service has been requested or provided on the line since 1976, and there are no revenues attributable to the line, no environmental impacts can be contemplated from abandonment of an unused line, and under these circumstances preparation of the statements required by these sections would be unduly burdensome and contribute nothing to the Commission's deliberations.

Before granting an exemption, we are required to provide the opportunity for a proceeding. This request for comments on the proposed exemption of the involved transaction is that opportunity.

In particular, we invite comments pertaining to the propriety of imposing provisions for the protection of employees at least as protective as those established in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). We also invite comments pertaining to these suitability or non-suitability of use of the rail properties for other (than rail transportation) public purposes, which

matter must be resolved under 49 U.S.C. 10906. If resolved affirmatively the Commission may include a prohibition on disposal of the properties for a period of up to 180 days after the effective date of the exemption sought.

All comments filed in response to this notice, along with the petition of Central, will be used to determine whether or not the exemption or waiver under 49 U.S.C. 10505 should be granted (in whole or in part).

This proceeding is instituted under the authority of 49 U.S.C. 10505 and pursuant to 5 U.S.C. 553, 559.

This proceeding does not appear to be a major federal action significantly affecting energy consumption or the quality of the human environment.

Dated: June 12, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Stafford, Clapp, Trantum, Alexis and Gilliam.

James H. Bayne,

Acting Secretary.

[FR Doc. 80-18935 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931, and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice

will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Motor Carrier Board, Members Holyfield, Hedetniemi, and Healy.
James H. Bayne,
Acting Secretary.

MC-FC-78604. By decision June 2, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 The Motor Carrier Board approved the transfer to Milk Tank Lines, Inc., of Frazier, PA, of Certificates No. MC-59064 issued August 14, 1970, to La Mar Hopewell, an individual, of Trout Run, PA, authorizing the transportation of fertilizer, between Baltimore, MD, on the one hand, and, on the other, Williamsport, PA; feed, between Buffalo, NY, on the one hand, and, on the other, Galetton and Wellsboro, PA; and lettuce, celery, and fresh vegetables, between Wellsboro, PA, and Baltimore, MD. Applicant's representative: Mr. Wilmer B. Hill, Attorney, Suite 805-666 Eleventh Street, N.W., Washington, DC 20001. TA application has been filed. Transferee presently holds no authority from the Commission.

MC-FC-78603. By decision of June 2, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 The Motor Carrier Board approved the transfer to Coastal Refrigeration, Inc., of East Greenwich, RI, of that portion of the operating rights in Certificates No. MC-2509 issued April 10, 1941, to D.S. Woodberry Co., of Boston, MA, authorizing the transportation of general commodities, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes, between Boston, MA, and points within ten miles of Boston, on the one hand, and, on the other, points in RI. Applicant's representative is: Mr. Irving Widett, Attorney for Transferor, 111 Devonshire Street, Boston, MA, 02109, Ms. Mary E. Kelley, Attorney for Transferee, 22 Sterns Avenue, Medford, MA 02155. TA Application has been filed. Transferee presently holds no authority from the Commission.

MC-FC-78585. By decision of June 12, 1980 under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132. The Motor Carrier Board approved the transfer to The Brewer Company of Cincinnati, OH of Certificate No. MC-110355 issued November 2, 1950 to Schuler Enterprises, Inc. of Aurora, IN authorizing the transportation of *Sand and gravel*, over irregular routes, From Cleves, Ohio, and points within two miles thereof, to points in Franklin and Dearborn Counties, Indiana. From Miamitown, Ohio, and points within four miles thereof to points in Franklin and Dearborn Counties, Indiana. *Bituminous concrete*, over irregular routes, From Cleves, Ohio, and points within two miles thereof to points in Franklin, Dearborn, Ripley, Decatur, Rush, Jennings, Ohio, Switzerland, Bartholomew, Shelby, Fayette, Union, and Jefferson Counties, Indiana. Return, with no transportation for compensation, except as otherwise authorized. Applicant's representative is: Warren C. Moberly 777 Chamber of Commerce Bldg. 320 N. Meridian St. Indianapolis, IN 46204. TA application has been filed. Transferee holds no authority.

MC-FC-78584. By decision of June 12, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132. The Motor Carrier Board approved the transfer to Vava P. Hill, d/b/a Eastern Illinois Film Service of Flora, IL of Certificate No. MC-15974 issued September 30, 1966 to Raymond J. Wilke and Betty L. Wilke d/b/a Eastern Illinois Film Service of Flora, IL authorizing the transportation of *films and associated articles, newspapers, and magazines*, between St. Louis, MO., and points in Illinois, from St. Louis over U.S. Highway 50 to Flora, Ill., and thence over irregular routes to points in that part of Illinois bounded by a line beginning at Flora, IL., and extending along U.S. Highway 45 to Fairfield, IL., thence along Illinois Highway 15 to Mount Carmel, IL., thence along Illinois Highway 1 to Lawrenceville, IL., and thence along U.S. Highway 50 to the points of beginning, including points on the indicated portions of the highways specified and return over irregular routes to Flora, IL., thence over the above-specified route to St. Louis, MO. Service is authorized to and from the off-route points of Centralia and Louisville, IL., unrestricted, and the off-route point of New Baden, IL., restricted to the transportation of motion picture films and associated articles. *Cigars*, from St. Louis, MO., to points in Illinois from St. Louis over U.S. Highway 50 to Flora, IL., and thence over irregular

routes to points in Illinois bounded by a line beginning at Flora, IL., and extending along U.S. Highway 45 to Fairfield, IL., thence along Illinois Highway 15 to MT. Carmel, IL., thence along Illinois Highway 1 to Lawrenceville, IL., and thence along U.S. Highway 50 to the point of beginning, including points on the indicated portions of the highways specified, and return over irregular routes to Flora, IL., thence over the above specified route to St. Louis, MO., Service is authorized to the off-route point of Centralia, IL. Irregular routes, motion picture films and associated articles, between Flora, IL., and Wayne City, IL., between Flora, IL., and Kinmundy, Farina and St. Francisville, IL. Applicant's representative is Vava P. Hill, R. #1, Flora, IL 62839. TA application has not been filed. Transferee holds no authority.

MC-FC-78580. By decision of June 13, 1980 issued under 49 U.S.C. 10931 or 10932 and 10926 and the transfer rules at 49 CFR Part 1132. The Motor Carrier Board approved the transfer to Stalsburg Express, Inc., of Deep River, CT, of Certificate of Registration No. MC-30285 and Certificate No. MC-30285 issued April 30, 1964 and May 17, 1962; the certificate of registration evidences a right to engage in transportation in interstate commerce corresponding to Motor Common Carrier Certificate C-297, dated June 20, 1957 issued by the Public Utilities Commission of Connecticut. The Certificates generally authorize a general commodity service between named points in CT. The Board imposed the following evidence that the underlying state certificate (C-297) has been transferred to transferee. Applicant's representative is: Judson Carr, 20 Main St., Essex, CT. 06426. An application seeking temporary lease authority has not been filed. Transferee holds no authority from the Commission.

MC-FC-78635. By decision of June 10, 1980 issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR Part 1132. The Motor Carrier Board approved the transfer to Apollo Motor Express, Inc., Shrewsbury, MA, of Certificate of Registration No. MC-109561 (Sub-2), issued June 5, 1979, to Terminal Operations, Inc., Worcester, MA, evidencing a right to engage in transportation in interstate commerce corresponding in scope to Massachusetts Irregular Route Common Carrier Certificate No. 5639 dated March 7, 1949, and transferred October 28, 1976, by the Massachusetts Department of Public Utilities, subject to the condition that prior to or concurrently with the consummation of the transaction, applicants file a certified

copy of the State Certificate as reissued to transferee or a certified copy of the State order approving the transfer of the underlying intrastate rights and a written notice confirming the date of consummation of that intrastate transaction. Applicant's representatives: For Transferee: Joseph M. Klements, 84 State St., Boston, MA 02109; and For Transferor: Francis E. Barrett, Jr., 10 Industrial Park, Hingham, MA 02043.

MC-FC-78416. By decision of June 3, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132. The Motor Carrier Board approved the transfer to Luna Truck Lines, Inc. of Gainesville, MO of Certificate NO. MC-65300 issued August 20, 1969, to Joe Luna d/b/a Luna Truck Line authorizing the transportation by *common carriage* of (a) general commodities, except those of unusual value, and except dangerous explosives, HHG (when transported as a separate and distinct service in connection with so-called "household movings"), commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over regular routes, between Springfield, MO, and Gainesville, MO, serving no intermediate points, from Springfield over US Hwy 85 to junction MO Hwy 14, thence over MO Hwy 14 to junction MO Hwy 5, and thence over MO Hwy 5 to Gainesville, and return over the same route, (b) livestock over irregular routes whether to transport exempt or non-exempt "livestock", or both, as described at 45 CFR 1047, and inform the Commission so that the certificate contains the appropriate commodity description. Applicant's representative is: James C. Smearingen, Hawkins, Brydon and Smearingen P.C., P.O. Box 456, Jefferson City, MO 65102.

MC-FC-78634. By decision of June 10, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132. The Motor Carrier Board approved the transfer to Edward Rabel, Jr., Peckville, PA of that portion of Certificate No. MC-33317, issued May 9, 1961, to Bison Freightways, Inc., Scranton, PA, authorizing the transportation of *Household goods*, Between Callicoon Center, NY, and points in NY and PA within 25 miles of Callicoon Center, on the one hand, and, on the other, New York, NY and points in NJ; and between points in Wayne County, PA, on the one hand, and, on the other, points in NY and NJ. Applicants' representative: Joseph F. Hoary, 121 S. Main St., Taylor, PA 18517.

By decision of May 28, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132 The Motor

Carrier Board approved the transfer to United States Freight Lines, Inc. of Pittsburgh, PA of Certificate No. MC-47109, MC-47109 (Sub-No. 6) and MC-47109 (Sub-No. 7) issued April 14, 1960, January 2, 1964 and May 17, 1974 to Sullivan Lines, Inc., and acquired by Burmen Company, Inc. of Pittsburgh, PA pursuant to MC-FC-77226, authorizing the transportation in MC-47109. *General commodities*, except Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, which are at the time moving on bills of lading of freight forwarders, Between Philadelphia and Pittsburgh, PA, New York and Buffalo, NY, Newark, NJ, Baltimore, MD, Washington, DC, and Akron, Canton, Cleveland, Toledo, Columbus, Dayton, and Cincinnati, OH, of the above routes; and *General commodities*, except articles of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, Between Detroit, MI, and Toledo, OH, serving all intermediate points; and off-route points in Wayne, Oakland, and Macomb Counties, MI, within four miles of Detroit, MI: From Detroit over U.S. Highway 25 to Toledo, and return over the same route.

MC 47109 (Sub-6). Regular routes: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment, which are at the time moving on bills of lading of freight forwarders, Between Cincinnati, OH, and Boston, MA, serving the intermediate points of Columbus and Dayton, OH, Pittsburgh, PA, New York, NY, Newark, NJ, New Haven, CT, and Springfield, MA; Between Pittsburgh, PA, and Steubenville, OH, as an alternate route; Between Pittsburgh, PA, Baltimore, MD, and Washington, DC, serving no intermediate points; Between Harrisburg, PA, and Baltimore, MD, serving no intermediate points or Harrisburg, PA; Between Harrisburg, PA, and Philadelphia, PA, serving no intermediate points or Harrisburg, PA; and Between Washington, DC, and New York, NY, serving the intermediate points of Baltimore, MD, and Philadelphia, PA; and in MC 47109 (Sub-7). Irregular routes: *General commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and

commodities requiring special equipment, (1) Between Cincinnati, Toledo, and Akron, OH, Chicago, IL, St. Louis, MO, and Milwaukee, WI, on the one hand, and, on the other, Fresno, Oakland, Los Angeles, San Francisco, Sacramento, San Diego, San Jose, and Santa Fe Springs, CA, Seattle, Spokane, and Tacoma, WA, Portland, OR, Phoenix and Tucson, AZ, Salt Lake City, UT and Reno and Las Vegas, NV. (2) Between Cincinnati, Toledo, and Akron, OH, on the one hand, and, on the other, Chicago, IL, St. Louis, MO, and Milwaukee, WI. Applicant's representatives: Brian C. Schreiber, Esq., 3624 Mellon Bank Building, Pittsburgh, PA 15219. TA application has not been filed. Transferee holds no authority.

MC-FC-78622. By decision of June 2, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 The Motor Carrier Board approved the transfer to Great Lakes Horse Transport, Inc., of Sturgis, MI, of Certificates No. MC-110937 (Sub-Nos. 1 and 2) issued 11/29/49 and 3/17/65, acquired by Quality Horse Transport, Inc. in No. MC-FC-76780, (Norman A. Niles, d.b.a. Niles Stables, successor-in-interest, of Northville, MI), authorizing the transportation of *Horses and stable equipment*, between points in Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin, traversing Maryland, Delaware, and the District of Columbia for operating convenience only. *Race horses and show horses*, and of *stable supplies and equipment and personal effects of attendants* in the same vehicle with horses, between points in Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin, on the one hand, and, on the other, points in California and Phoenix, Ariz. and points within 25 miles thereof. Applicant's representative: James R. Davis, 1018 Michigan National Tower, Lansing, MI 48933. An application seeking temporary lease authority has been filed. Transferee holds no authority from the Commission.

MC-FC-78602. By decision of June 3, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132. The Motor Carrier Board approved the transfer to Sterling Trucking, Inc., of Newton, MA, of Certificate. MC-93620 issued July 21, 1976, to Stuart L. Johnson and Florence Johnson, a partnership,

d.b.a. Sterling Transport Company, of Sterling, MA, authorizing the transportation of *asphalt and bituminous road-building materials*, from Tiverton, RI, to Worcester, MA, serving the intermediate and off-route points of East Providence and Providence, RI, restricted to pickup only, and those within 10 miles of Worcester, restricted to delivery only: from Tiverton over unnumbered highways to the Rhode Island-Massachusetts State line, thence over city streets to Fall River, MA, thence over US Hwy 6 to Providence, RI, thence over RI Hwy 122 to the Rhode Island-Massachusetts State line, thence over MA Hwy 122 to junction MA Hwy 122A to Worcester; and return over the same route: *tar and asphalt*, in bulk, in tank trucks, in seasonal operations during the period extending from the 1st day of April to the last day of December, both inclusive, of each year, from East Providence, RI, to points in Worcester, Franklin, Hampshire, Hampden, and Berkshire Counties, MA, except those located on, south, and east of US Hwy 202; *bituminous road-building materials*, between Chelsea, MA, on the one hand, and, on the other, Providence, RI, and points in that part of NH east and south of a line beginning at the New Hampshire-Massachusetts State line and extending along US Hwy 3 to Nashua, NH, thence across the Merrimack River to Hudson, NH, thence along NH Hwy 102 to junction NH Hwy 107, thence along NH Hwy 107 to junction US Hwy 202, and thence along US Hwy 202 to the New Hampshire-Maine State line. Between points in NH, ME, VT, CT, MA, and RI. *Liquid tar*, in bulk, in tank vehicles, from Worcester, MA, to Herkimer, NY, *liquid road tar*, in bulk, in tank vehicles, from Worcester, MA, to points in Windham, New London, Tolland, and Middlesex Counties, CO. Applicant's representative is: Mr. Frank J. Weiner, Attorney, 15 Court Square, Boston, MA 02108 (transferee), Mr. Kenneth B. Williams, Attorney, 84 State Street, Boston, MA 02109. Application for TA has not been filed. Transferee presently holds no authority from the Commission.

MC-FC-78558. By decision of June 3, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132. The Motor Carrier Board approved the transfer to Acord Transportation, Inc., of Chandler, OK, of Certificates No. MC 134405 (Sub-Nos. 13, 15, 26 and 32) issued 10/4/74, 10/4/74, 3/9/76 and 3/3/76 to Bacon Transport Company of Ardmore, OK, authorizing the transportation of *anhydrous ammonia*, in bulk, in tank vehicles, from the

facilities of Farmland Industries, Inc., at or near Enid, OK, to points in Arkansas, Colorado, Kansas, Missouri, and Texas (except points in Chambers, Montgomery, Harris, Port Bend, Galveston, Liberty, and Brazoria Counties), *anhydrous ammonia*, from the plant site of Farmland Industries, Inc., at or near Edid, OK, to points in Louisiana, *liquid fertilizer and liquid fertilizer materials*, in bulk, in tank vehicles, from the plant site of Agric Chemical Company located at or near Verdigris, OK, to points in Arkansas, Kansas, Louisiana, Missouri (except St. Louis and points in Missouri within its Commercial Zone as defined by the Commission), and Texas, and *anhydrous ammonia, nitrogen fertilizer solutions, and urea liquor*, from the plant sites of Oklahoma Nitrogen Company and Bison Nitrogen Products Co., located at or near Woodward, OK to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, South Dakota, and Texas. Applicant's representative is: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 63112. TA application has not been filed. Transferee holds no authority.

[FR Doc. 80-18937 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: June 10, 1980.

In our decisions of May 13, 20, and 27, and June 3, 1980, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.1 percent. Accordingly, we are authorizing that the 13-percent surcharge for this traffic remain in effect. All owner-operators are to receive compensation at this level. No change is authorized in the 4.9-percent surcharge for the bus carriers, the 1.3-percent surcharge for United Parcel Service, nor the 2.3-percent surcharge on less-than-truckload traffic performed by carriers not utilizing owner-operators.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over

transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered: This decision shall become effective Friday, 12:01 a.m. June 13, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam. Commissioner Clapp absent and not participating.

James H. Bayne
Acting Secretary.

Appendix—Fuel Surcharge

Base date and price per gallon (including tax)	
January 1, 1979.....	63.5¢
Date of current price measurement and price per gallon (including tax)	
June 9, 1980.....	112.8¢

	Transportation performed by—			
	Owner operator ¹ (1)	Other ² (2)	Bus carrier (3)	UPS (4)
Average percent: Fuel expenses (including taxes) of total revenue.	16.9	2.9	6.3	3.3
Percent surcharge developed.	13.1	2.3	4.9	³ 2.1
Percent surcharge allowed.	13.0	2.3	4.9	⁴ 1.3

¹ Apply to all truckload rated traffic.

² Including less-than-truckload traffic.

³ The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to the UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

⁴ The developed surcharge figure is reduced 0.8 percent to reflect fuel related increases already included in UPS rates.

[FR Doc. 80-18936 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 18]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack and Crate

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

Notice

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by

Special Rule 247 of the Commission's general rules of practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected*.

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 2368 (Sub-22M1F) (notice of petition to modify certificate), filed March 21, 1980. Petitioner: BRALLEY-WILLET TANK LINES, INC., 2212 Deepwater Terminal Rd., P.O. Box 495, Richmond, VA 23204. Representative: Steven L. Weiman, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Petitioner holds a motor *common carrier* certificate in MC 2368 Sub 22 issued July 8, 1971, authorizing transportation, over irregular routes, of *acids and chemicals, petroleum*

products, fertilizer solutions, and liquid animal feed and feed supplements (except aggregate, asphalt and asphalt products, flour, fly ash, fuel oil, gasoline, kerosene, limestone and limestone products, mineral fillers, and syrups), in bulk, in tank vehicles, between points in VA, restricted against the joining or tacking of the authority granted herein and any authority now held by carrier for the purpose of rendering a through service from or to points outside VA. By the instant petition, petitioner seeks to delete the restriction "except aggregate, asphalt and asphalt products, flour, fly ash, fuel oil, gasoline, kerosene, limestone and limestone products, mineral fillers, and syrups" from the commodity description.

MC 144513 (Sub-5M1F) (notice of filing of petition to modify certificate), filed April 28, 1980. Petitioner: CONDOR CONTRACT CARRIERS, INC., 656 Wooster St., Lodi, OH 44254. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Petitioner holds motor common carrier certificate in MC 144513 Sub 5, issued January 18, 1980, to operate in interstate or foreign commerce, over irregular routes, of *Shop and construction equipment, shop and construction supplies, coatings, hand tools, metal and rubber products, and metal and rubber materials*, (except commodities in bulk), and commodities which by reason of size or weight require the use of special equipment, between Akron, OH, on the one hand, and, on the other, points in the U.S. (except AK, HI, and OH), restricted to the transportation of traffic originating at or destined to Akron, OH. By the instant petition, petitioner seeks to modify the certificate as follows: (a) clarify the commodity description insofar as the certificate presently authorizes the transportation of metal and rubber products and metal and rubber materials by changing to read metal products, rubber products, and rubber materials, and metal materials, (b) to add chemicals, paper and paper products to the commodity description, and (c) to name all points in OH, rather than only Akron, OH, as the base from and to which the radial service authorized may be provided.

Motor Carrier Operating Rights Applications

Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's general rules of practice (49 CFR 1100.247). These rules provide, among other things, that a petition to intervene either with or without leave must be

filed with the Commission within 30 days after the date of publication in the Federal Register with a copy being furnished the applicant. Protests to these applications will be rejected.

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 126822 (Sub-85F), filed April 14, 1980. Applicant: WESTPORT TRUCKING COMPANY, a MO Corporation, 15580 South 169 Hwy, Olathe, KS 66061. Representative: John T. Pruitt (same address as applicant). Authority sought to operate as a common carrier, in interstate or foreign commerce, over irregular routes, transporting *hides*, between points in the U.S. (except AK and HI). (Hearing site: Kansas City, MO.)

Note.—This application has no public support. Applicant states that the purpose of the application is to consolidate numerous certificates into one master certificate, eliminate duplication, simplify interpretation, eliminate shipper confusion in constructing

mileage for determining applicable rates, and eliminate circuitry to save fuel.

MC 143846 (Sub-13F), filed February 15, 1980, previously noticed in the Federal Register issue of April 8, 1980. Applicant: MISSION TRANSPORT, INC., 50 Van Keuren Ave., Jersey City, NJ 07306. Representative: Arthur J. Piken, Queens Office Tower, 92-25 Queens Blvd., Rego Park, NY 11374. Authority sought to operate as a *contract carrier* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *department store merchandise* (except commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Montgomery Ward & Co., its affiliates and subsidiaries, Chicago, IL. (Hearing site: New York, NY, or Newark, NJ.)

Note.—A summary grant was published in this proceeding in Federal Register of April 8, 1980. The purpose of this republication is (1) to give notice that that summary grant was incorrect and should be disregarded, and (2) to publish the correct authority sought.

MC 150106 (Sub-1F), filed April 14, 1980. Applicant: GOLDEN ARCH EXPRESS, INC., 1 McDonald's Plaza, Oak Brook, IL 60521. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by restaurants, (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic destined to the facilities of or used by McDonald's Corporation, its affiliates, franchisees, suppliers and distributors. (Hearing site: Chicago, IL.)

Permanent Authority Decisions Volume Decision-Notice

Decided: June 10, 1980.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall comply with Rule 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below, and specify with

particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after June 24, 1980.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests, filed on or before July 24, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 130286 (Sub-1F), filed December 18, 1979. Applicant's name and address are NORTHERN TRANSPORTATION SERVICES, INC., Ripley Rd., Rutland, VT 05701. The name under which operations will be performed is NORTHERN TRANSPORTATION SERVICES, INC. Applicant is represented by James M. Burns in this proceeding whose address is 1383 Main St., Suite 413, Springfield, MA 01103. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: William G. Cutler, President, Treasurer, Director and sole shareholder, and Martin Keeler, Director; both have the same address as applicant. The daily operations will be managed by William G. Cutler, whose business address is the same as applicant's. Applicant is affiliated with the following shipper or warehouse: None.

MC 130820F, filed November 29, 1979. Applicant's name and address are LITTLE BROWNIE BROKERAGE, INC., 5322 Burning Tree Drive, Orlando, FL 32811. The name under which operations will be performed is LITTLE BROWNIE BROKER, INC. Applicant is represented by James E. Wharton, Suite 811, Metcalf Building, 100 South Orange Ave., Orlando, FL 32801. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: John Paul Brown, Director, President, and shareholder, and Linda Lee Brown, Director, Secretary and shareholder (same address as applicant). The daily operations will be

managed by John Paul Brown whose business address is (same as applicant). Applicant is affiliated with the following shipper or warehouse: None.

MC 130848F, filed April 10, 1980. Applicant: PINK SQUIRREL TOURS, 3820 N. High School Rd., Indianapolis, IN 46254. Representative: Tom Hatchett (same address as applicant). To engage in operations, in interstate commerce, as a broker, at Indianapolis, IN, to arrange for the transportation by motor vehicle, of passengers and their baggage, in special and charter operations, beginning and ending at points in Marion County, IN, and extending to points in the U.S. (except AK and HI). (Hearing site: Indianapolis, IN.)

MC 130849F, filed April 9, 1980. Applicant: AUDREY'S TOURS, INCORPORATED, 124 Buford Rd., Richmond, VA 23235. Representative: David E. Willis (same address as applicant). To engage in operations, in interstate or foreign commerce as a broker, at Richmond, VA, to arrange for the transportation by motor vehicle, of passengers and their baggage, in special and charter operations, beginning and ending at Richmond, Hopewell, Fort Lee, and Petersburg, VA, and points in Chesterfield, Henrico, and Hanover Counties, VA, and extending to points in the U.S. (including AK and HI).

MC 130869F, filed April 14, 1980. Applicant's name and address are WORLD WIDE FORWARDING, INC., 3063 Hartley Rd., Jacksonville, FL 32217. The name under which operations will be performed is WORLD WIDE FORWARDING, INC. Applicant is represented by Alan F. Wohlstetter, in this proceeding, whose address is 1700 K St., NW, Washington, DC 20006. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: (1) Richard M. Weiss, President, Director, and stockholder, 3063 Hartley Rd., Jacksonville, FL 32217; and (2) Joan Petit Weiss, Vice-President, Treasurer, Director and stockholder, 3063 Hartley Rd., Jacksonville, FL 32217. The daily operations will be managed by Richard M. Weiss whose business address is the same as applicant. Applicant is affiliated with the following shipper or warehouse: None.

Permanent Ex-Water Authority Decision-Notices

Decided: June 10, 1980.

The following applications are governed by 49 CFR 1062.3. Applicants seek to obtain motor common carrier

authority to perform service within the commercial zone of port cities where the shipment has a prior or subsequent movement by maritime carrier. The full text and explanation of the rules are contained at 44 FR 7965, as corrected at 44 FR 37230.

The sole issue upon which these applications can be protested is the applicant's fitness to perform the service. Protests (an original and one copy) must be filed with the Commission within 30 days of the Federal Register publication. The protest must contain the *specific facts* being relied upon to challenge fitness, and must contain a certification that it has been served concurrently upon applicant's representative, or, if none is listed, upon the applicant. Applicant may file a reply statement to any protest. The filing of these statements will complete the record, unless it is later determined that more evidence must be supplied.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after June 24, 1980.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity.

Each applicant is fit, willing, and able to properly perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly

reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act).

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 150547F, filed April 11, 1980. Applicant: CASEY'S TRUCKING, INC., 617 Grant Ave., Virginia Beach, VA 23452. Representative: Kevin C. Dailey (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the commercial zone of Norfolk, VA, restricted to traffic having a prior or subsequent movement by water.

Motor Carrier Alternate Route Deviations Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before July 24, 1980.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 989 (Deviation No. 7), IDEAL TRUCK LINES, INC., 6785 East 50th Avenue, Commerce City, CO 80022, filed

April 9, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: (1) From Colorado Springs, CO over U.S. Hwy 24 to junction Interstate Hwy 70 at Limon, CO, then over Interstate Hwy 70 to Goodland, KS, then over Kansas Hwy 27 to Wheeler, KS, (2) From Colorado Springs, CO over US Hwy 24 to junction Interstate Hwy 70 at Limon, CO, then over Interstate Hwy 70 to Goodland, KS, and (3) From Ft. Morgan, CO over Interstate Hwy 76 to junction U.S. Hwy 6 at Sterling, CO, then over U.S. Hwy 6 to junction Colorado Hwy 113, then over Colorado Hwy 113 to the Colorado-Nebraska State line, then over Nebraska Hwy 19 to Sidney, NE, then over U.S. Hwy 385 to Bridgeport, NE and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: (1) From Colorado Springs, CO, over Interstate Hwy 25 to junction Interstate Hwy 70 at Denver, CO, then over Interstate Hwy 70 to junction U.S. Hwy 36 at Byers, CO, then over U.S. Hwy 36 to St. Francis, KS, then over U.S. Hwy 36 to Wheeler, KS, (2) From Colorado Springs, CO, over Interstate Hwy 25 to junction Interstate Hwy 70 at Denver, CO, then over Interstate Hwy 70 to junction U.S. Hwy 36 at Byers, CO, then over U.S. Hwy 36 to St. Francis, KS, then over U.S. Hwy 36 to Wheeler, KS, then over Kansas Hwy 27 to Goodland, KS, and (3) From St. Morgan, CO, over Colorado Hwy 52 to junction Colorado Hwy 14, then over Colorado Hwy 14 to junction Colorado Hwy 71, then over Colorado Hwy 71 to the Colorado-Nebraska State line, then over Nebraska Hwy 71 to Scottsbluff, NE, then over U.S. Hwy 26 to Bridgeport, NE.

MC 33641 (Deviation No. 127), IML FREIGHT, INC., P.O. Box 30277, Salt Lake City, UT 84125, filed May 12, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Los Angeles, CA over Interstate Hwy 10 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Fort Worth, TX and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Los Angeles, CA over US Hwy 66 to Barstow, CA, then over US Hwy 91 to junction UT Hwy 59, then over UT Hwy 59 to the UT-AZ State line, then over AZ

Hwy 389 to junction US Hwy 89A, then over US Hwy 89A to junction US Hwy 89, then over US Hwy 89 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction US Hwy 287, then over US Hwy 287 to junction Interstate Hwy 20 at Fort Worth, TX, and return over the same route.

MC 48958 (Deviation No. 96), ILLINOIS-CALIFORNIA EXPRESS, INC., P.O. Box 9050, 601 Ross St., Amarillo, TX 79189; filed May 27, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Dallas, TX over US Hwy 75 to junction US Hwy 69, then over US Hwy 69 to junction Interstate Hwy 44, then over Interstate Hwy 44 to junction Interstate Hwy 55, then over Interstate Hwy 55 to Chicago, IL and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Dallas, TX over TX Hwy 114 to Rhome, TX, then over US Hwy 287 to Wichita Falls, TX, then over TX and OK Hwys 79; and US Hwy 70 to junction OK Hwy 76, then over OK Hwy 76 to junction US Hwy 277, then over US Hwy 277 to Oklahoma City, OK, then over Interstate Hwy 35 to Kansas City, MO, then over US Hwy 40 to junction US Hwy 73, then over US Hwy 73 to junction US Hwy 6, then over US Hwy 6 to junction US Hwy 34, then over US Hwy 34 to Chicago, IL and return over the same route.

Motor Carrier Alternate Route Deviations Notice

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before July 24, 1980.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 1515 (Deviation No. 753), GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077, filed May 6, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage* and

express and newspapers in the same vehicle with passengers, over a deviation route as follows: From junction US Hwy 50 and Interstate Hwy 66 near Fairfax, VA, over Interstate Hwy 66 to junction Interstate Hwy 81, then over Interstate Hwy 81 to New Market, VA and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Fairfax, VA over US Hwy 50 to Winchester, VA, then over US Hwy 11 to New Market, VA and return over the same route.

Permanent Authority Decisions; Decision-Notice; Substitution Applications: Single-Line Service for Existing Joint-Line Service

Decided: June 9, 1980.

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission on or before July 24, 1980.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately preceding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition; however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and

undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after June 24, 1980.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act).

In the absence of legally sufficient petitions for intervention, filed on or before July 24, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a

notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 4, Members Fitzpatrick, Fisher, and Dowell.

MC 29910 (Sub-23F), filed November 2, 1979. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th St., Fort Smith, AR 72901.

Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Ave., Fort Smith, AR 72902. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, transporting: OVER REGULAR ROUTES (A) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Two Rivers, WI, and North Chicago, IL, from Two Rivers over WI Hwy 42 to Manitowoc, WI, then over U.S. Hwy 141 to junction Milwaukee County Hwy B, then over Milwaukee County Hwy B to Milwaukee, WI, then over WI Hwy 42 to the WI-IL State line, then over IL Hwy 42 to North Chicago, IL, and return over the same route, (2) between Milwaukee and Racine, WI, from Milwaukee over Milwaukee County Hwy H to junction WI Hwy 38, then over WI Hwy 38 to Racine, and return over the same route, (3) between Milwaukee, WI and junction Milwaukee County Hwy Z and WI Hwy 42, from Milwaukee over Milwaukee County Hwy AA to junction Milwaukee County Hwy Z, then over Milwaukee County Hwy Z to junction WI Hwy 42, and return over the same route, serving points in Milwaukee County, WI as off-route points in (1) through (3) above, (4) between Sheboygan and Chilton, WI, from Sheboygan over WI Hwy 32 to Kiel, WI, then over WI Hwy 57 to Chilton, and return over the same route, (5) between Sheboygan and Plymouth, WI, over WI Hwy 23, (6) between Sheboygan and Sheboygan Falls, WI, over WI Hwy 28, (7) between Milwaukee and Madison, WI, from Milwaukee over WI Hwy 19 to Sun Prairie, WI, then over U.S. Hwy 151 to Madison, and return over the same route, (8) between Milwaukee, WI, and South Beloit, IL, from Milwaukee over

WI Hwy 15 to Beloit, WI, then over U.S. Hwy 51 to South Beloit, IL, and return over the same route, (9) between Milwaukee and Genoa City, WI, from Milwaukee over U.S. Hwy 41 to junction WI Hwy 36, then over WI Hwy 36 to Lake Geneva, WI, then over U.S. Hwy 12 to Genoa City, and return over the same route, (10) between Racine and Janesville, WI, over WI Hwy 11, serving the off-route point of Williams Bay, WI, (11) between Racine and Rochester, WI, over WI Hwy 20, (12) between Milwaukee and Janesville, WI, from Milwaukee over U.S. Hwy 18 to Waukesha, WI, (also over WI Hwy 59), then over WI Hwy 59 to Milton, WI, then over WI Hwy 26 to Janesville, and return over the same route, serving the off-route point of Genesee Depot, WI, (13) between Watertown and Portage, WI, over U.S. Hwy 16, serving the off-route points of Clyman, Reeseville, Fall River, and Pardeeville, WI, (14) between Watertown and Portage, WI, from Watertown over WI Hwy 26 to junction WI Hwy 33, then over WI Hwy 33 to Beaver Dam, WI, then over U.S. Hwy 151 to Columbus, WI, then over U.S. Hwy 16 to Portage, and return over the same route, (15) between Watertown and Whitewater, WI, from Watertown over WI Hwy 26 to Fort Atkinson, WI, then over U.S. Hwy 12 to Whitewater, and return over the same route, (16) between Watertown, WI and junction WI Hwy 30 and WI Hwy 26, from Watertown over County Hwy A to Lake Mills, WI, then over WI Hwy 30 to junction WI Hwy 26, and return over the same route, (17) between Lake Geneva and Delavan, WI, from Lake Geneva over WI Hwy 36 to Williams Bay, WI, then over County Hwy H to junction WI Hwy 50, then over WI Hwy 50 to Delavan, and return over the same route, serving all intermediate points in (4) through (17) above, (18) between junction Racine County Hwy K and WI Hwy 38, east of Franksville, WI, and junction U.S. Hwy 41 and WI Hwy 36, southwest of Milwaukee, WI, from junction Racine County Hwy K and WI Hwy 38 over Racine County Hwy K to Thompsonville, WI, then over U.S. Hwy 41 to junction WI Hwy 36, and return over the same route, serving all intermediate points, (19) between Beaver Dam and Markesan, WI, from Beaver Dam over WI Hwy 33 to junction County Hwy A at Randolph, WI, then over County Hwy A to Markesan (also from junction WI Hwy 33 and County Hwy A, over WI Hwy 33 to junction WI Hwy 73, then along WI Hwy 73 to junction WI Hwy 44, east of Manchester, WI, then over WI Hwy 44 to Markesan), and return over the same route, serving

the off-route points of Manchester and Kingston, WI, (20) between Minnesota Junction, and Port Washington, WI, over WI Hwy 33, (21) between Oconomowoc and Horicon, WI, from Oconomowoc over WI Hwy 67 to Mayville, WI, then over WI Hwy 28 to Horicon, and return over the same route, serving Horicon for purpose of joinder only, (22) between junction WI Hwys 33 and 73, and Portage, WI, over WI Hwy 33, serving the junction of WI Hwys 33 and 73 for purpose of joinder only, (23) between junction WI Hwys 33 and 44, and Wyocena, WI, over WI Hwy 44, serving the junction of WI Hwys 33 and 44 for purpose of joinder only, (24) between junction WI Hwy 44 and County Hwy P, northeast of Pardeeville, WI, and junction WI Hwys 33 and 73, north of Randolph, WI, from junction WI Hwy 44 and County Hwy P over County Hwy P to Randolph, then over WI Hwy 73 to junction WI Hwy 33, and return over the same route, serving the termini for purpose of joinder only, (25) between junction WI Hwys 33 and 146, and Cambria, WI, over WI Hwy 146, serving the termini for purpose of joinder only, (26) between Beloit, WI, and Rockford, IL over U.S. Hwy 51, and (27) between Beloit, WI, and Rockford, IL, from Beloit over Interstate Hwy 90 to junction U.S. Hwy 20, then over U.S. Hwy 20 (also over U.S. Hwy 20 BR) to Rockford, and return over the same route, serving no intermediate points in (26) and (27) above. (B) *General commodities* (except those of unusual value, classes A and B explosives, small arms ammunition, furs, commodities in bulk, and those requiring special equipment) (1) between Milwaukee, WI, and junction WI Hwy 15 near East Troy, WI, over unnumbered hwy, (2) between Hales Corners and St. Martin, WI, over unnumbered hwy, (3) between junction unnumbered hwy and WI Hwy 83 near Lake Beulah and Mukwonago, WI, over WI Hwy 83, (4) between Burlington, WI, and junction unnumbered hwy south of Salem, WI, over WI Hwy 83, (5) between Genoa City, WI, and junction unnumbered hwy north of Twin Lakes, WI, over unnumbered hwy, (6) between junction WI Hwy 83 and unnumbered hwy south of Salem, WI, to Wilmot, WI, over unnumbered hwy, (7) between Wilmot, WI, and junction WI Hwy 83 south of New Munster, WI, over unnumbered hwy, (8) between junction WI Hwy 83 and unnumbered hwy northeast of Silver Lake, WI, and junction unnumbered hwy north of Twin Lakes, WI, over unnumbered hwy, (9) between Kenosha, WI, and junction WI Hwy 83, over WI Hwy 50, (10) between junction WI Hwy 50 and unnumbered hwy and

Pleasant Prairie, WI, over unnumbered hwy, (11) between junction WI Hwy 50 and U.S. Hwy 45 and Bristol, WI, over U.S. Hwy 45, (12) between junction unnumbered hwy north of Lake Elizabeth, and Lake Elizabeth, WI, over unnumbered hwy, serving all intermediate points in (1) through (12) above. (C) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Gibbsville and Milwaukee, WI, from Gibbsville over WI Hwy 42 to junction Milwaukee County Hwy B, then over Milwaukee County Hwy B to Milwaukee, and return over the same route, serving the intermediate point of Cedar Grove, WI, and serving the off-route point of Oostburg, WI, restricted to traffic having a prior movement by rail. (D) *General commodities* (except those of unusual value, classes A and B explosives, furs, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between junction WI Hwy 30 and WI Hwy 19, and Madison, WI, over WI Hwy 30, serving the intermediate point of Delafield, WI, and (E) Alternate routes for operating convenience only: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between junction U.S. Hwy 141 and WI Hwy 57 and junction WI Hwy 144 and U.S. Hwy 141, from junction U.S. Hwy 141 and WI Hwy 57 over WI Hwy 57 to junction WI Hwy 144, then over WI Hwy 144 to junction U.S. Hwy 141, and return over the same route, serving no intermediate points, and (2) between Juneau, WI, and Hartford, WI, from Juneau over WI Hwy 115 to junction WI Hwys 115, 67, and 60, north of Neosho, WI, then over WI Hwy 60 to Hartford, and return over the same route, serving Hartford for purpose of joinder only. **IRREGULAR ROUTES:** (A) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Racine, Kenosha, Burlington, Waukesha, Watertown, Port Washington, Sheboygan and East Troy, WI, and points in Milwaukee County, WI, and (B) *paper mill machine parts*, between the facilities of Beloit Corporation at Rockton, IL, on the one hand, and, on the other, points in Outagamie, Brown, Wood, Portage, and

Winnebago Counties, WI. (Hearing site: Milwaukee, WI, or Chicago, IL.)

Note.—Applicant intends to tack with its existing authority. The purpose of this application is to substitute single-line for joint-line operations.

MC 29910 (Sub-245F), filed December 17, 1979. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th St., Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), between Las Cruces, NM, and El Paso, TX, from Las Cruces over NM Hwy 478 to Anthony, NM, then over U.S. Hwy 80 to El Paso, and return over the same route, serving all intermediate points, and serving points in Dona Ana County, NM, and El Paso County, TX, as off route points. (Hearing site: Dallas or El Paso, TX.)

Note.—Applicant intends to tack with its existing authority. The purpose of this application is to substitute single-line for joint-line operations.

MC 61440 (Sub-182F), filed January 18, 1980. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N.W. 63rd St., Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), between Toledo, OH, and Detroit, MI, over Interstate Hwy 75, serving no intermediate points, restricted against traffic originating at or destined to Pittsburgh, PA, and points in IL, IN, and OH. (Hearing site: Oklahoma City, OK, or Washington, DC.)

Note.—Applicant intends to tack with its existing authority at Toledo, OH. The purpose of this application is to substitute single-line for joint-line operations.

Irregular-Route Motor Common Carriers of Property-Elimination of Gateway Letter Notices

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the

Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR Part 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before July 7, 1980. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successfully filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 114273 (Sub-E13), filed March 1, 1978. Applicant: CRST, INC., 3930 16th Ave., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Robert E. Konchar, Suite 315 Commerce Exchange Bldg., 2720 First Avenue NE, Cedar Rapids, IA 52406. (1) *Such commodities* as are used by dealers in five-and-ten-cent store merchandise, between Chicago, IL, on the one hand, and, on the other, Annapolis, Baltimore, Cumberland, Frostburg, Rockville, and Westminster, MD, Alexandria and Richmond, VA, Keyser and Piedmont, WV, and Washington, DC. The purpose of this filing is to eliminate the McKeesport, PA, gateway. (2) *Such commodities* as are used or sold by dealers in five-and-ten cent store merchandise, from Frederick and Hagerstown, MD, to Chicago, IL. The purpose of this filing is to eliminate the McKeesport, PA, gateway. (3) (a) *paper and paper products*, and (b) *wood pulpboard* in rolls, from Franklin, VA, to Chicago, IL. The purpose of this filing is to eliminate the gateways of Pittsburgh and Washington, PA. (4) *Groceries* (except fresh vegetables) from Baltimore, MD, to Chicago, IL. The purpose of this filing is to eliminate the gateway of Blairsville, PA. (5) *Glass containers, closures, and rubber rings for glass containers*, and *wooden and paper cases and labels* for use in with the sale and distribution of glass containers from Chicago, IL, to points in that part of Virginia on, east, and south of a line beginning at the Virginia-North Carolina State line and extending along U.S. Hwy 29 through Danville and Lynchburg, VA, to junction U.S. Hwy 60 at Amherst, VA, then east along U.S. Hwy 60 to Richmond, VA, and then along U.S. Hwy 360 through

Tappahannock, VA, to Reedville, VA, on the Del-Mar-Va Peninsula. The purpose of this filing is to eliminate the gateway of Washington, PA. (6) *Candy and paper products*, from Chicago, IL, to Annapolis, Baltimore, Cumberland, Frostburg, Rockville, and Westminster, MD, Keyser and Piedmont, WV, and Washington, DC. The purpose of this filing is to eliminate the gateway of Pittsburgh, PA. (7) *Paper and paper articles*, as described in Appendix XI to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, and woodpulp, from West Point, VA, to Chicago, IL. The purpose of this filing is to eliminate the gateway of Pittsburgh, PA.

By the Commission.
James H. Bayne,
Acting Secretary.

[FR Doc. 80-18938 Filed 6-23-80; 8:45 am]
BILLING CODE 7035-01-M

[Forty-Third Revised Exemption No. 12]

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

June 19, 1980.

To All Railroads:

It appearing, That the railroads named herein own numerous plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, ICC RER 6410-D, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM" or "XMI," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1(a), 2(a) and 2(b).

Atlantic and Western Railway
Reporting Marks: ATW
Burlington Northern Inc.
Reporting Marks: BN-CBQ-GN-NP-SPS
Chicago & Illinois Midland Railway Company

Reporting Marks: CIM
Consolidated Rail Corporation
Reporting Marks: BCK-CNJ-CR-DLW-EL-ERIE-LV-NH-NYC-P&E. PAE-PC-PCA-PRR-RDC-TOC-RR**
Fonda, Johnstown and Gloversville Railroad Company
Reporting Marks: FJG
Hartford and Slocum Railroad Company
Reporting Marks: HS
Hillsdale County Railway Company Inc.
Reporting Marks: HCRC
Lackawaxen and Stourbridge Railroad Corporation
Reporting Marks: LASB
Maryland and Pennsylvania Railroad Company
Reporting Marks: MPA
Pickens Railroad Company
Reporting Marks: PICK
Effective June 15, 1980, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., June 13, 1980.
Interstate Commerce Commission.

Robert S. Turkington,
Agent.

[FR Doc. 80-18940 Filed 6-23-80; 8:45 am]
BILLING CODE 7035-01-M

[Ninth Revised Exemption No. 141]

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

June 19, 1980.

To All Railroads:

It appearing, That the railroads named herein own numerous plain gondola cars less than 61-ft.; that under present conditions, there are surpluses of these cars on their lines; that return of these cars to the car owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain gondola cars, 61-ft. in length, described in the Official Railway Equipment Register, ICC-RER No. 6410-B, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "GB," which are less than 61-ft. in length, and which bear the reporting marks listed below, may be used without regard to the requirements of Car Service Rules 1 and 2.

Aberdeen and Rockfish Railroad Company
Reporting Marks: AR
*Atlantic and Western Railway Company
Reporting Marks: ATW
Chicago, West Pullman & Southern Railroad Company

Reporting Marks: CWP-CWP&S
*Columbus and Greenville Railway Company
Reporting Marks: CAGY
East St. Louis Junction Railroad Company
Reporting Marks: ESLJ
*Illinois Terminal Railroad Company
Reporting Marks: ITC
Louisiana Midland Railway Company
Reporting Marks: LOAM
Maryland and Delaware Railroad Company
Reporting Marks: MDDE
Octoraro Railway, Inc.
Reporting Marks: OCTR
*The Pittsburgh and Lake Railroad Company
Reporting Marks: POLE
Southern Railway Company
Reporting Marks: SOU

Effective June 15, 1980, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., June 13, 1980.
Interstate Commerce Commission.

Robert S. Turkington,
Agent.

[FR Doc. 80-18941 Filed 6-23-80; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 17]

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations, Intrastate Applications, Gateways, and Pack, and Crate

Petitions for Modification, Interpretation, or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave must be filed with the Commission within 30 days after the date of publication in the Federal Register* with a copy being furnished the applicant. Protests to these applications will be rejected.

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has

performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 42242 (Sub 1 and Sub 2 (M1F)) (Notice of filing of petition to modify licenses), filed November 20, 1979. Petitioner: CONSOLIDATED TERMINAL AND TRAVEL BUREAU, INC., 46 West 43 St., New York, NY 10036. Representative: Robert E. Goldstein, 370 Lexington Ave., New York, NY 10017. Petitioner holds licenses in MC-42242 Sub 1, issued October 24, 1960, to engage in operations as a broker, at New York, NY, to arrange for the transportation of *passengers and their baggage*, in special or charter operations, in tours, beginning and ending at New York, NY, and extending to points in AK and HI; and in Sub 2, issued November 21, 1960, to engage in operations, at New York, NY, in arranging for the transportation of *passengers and their baggage*, between points in the U.S. (except AK and HI).

By the instant petition, petitioner seeks to modify the licenses as follows: In both Sub 1 and Sub 2, to engage in operations as a broker, at all points in the U.S.

Note.—Any duplication of authority presently held by petitioner will not confer more than one operating right.

MC 87523 (M1F) (notice of filing of petition to modify certificate), filed April 29, 1980. Petitioner: STEWART TRUCKING COMPANY, INC., P.O. Box 5155, Manchester, NH 03108. Representative: Edward J. Kiley, 1730 M Street, NW, Washington, DC 20036. Petitioner holds motor *common carrier* certificate in MC-87523 issued July 18, 1978, to operate in interstate or foreign commerce, over irregular routes, transporting (1) *casein*, from Colebrook, NH, and points in VT, to Bainbridge, NY; and (2) *empty casein containers and supplies and equipment* used in the manufacture of casein, from Bainbridge, NY, to Colebrook, NH, and points in VT, (3) *milk, cream and products thereof*, except casein, from Enosburg Falls, East Berkshire, Morrisville, and Troy, VT, to Boston, Somerville, Lowell, Mansfield, Cambridge, Andover, and Everett, MA; and (4) *empty containers*, for milk, cream, and products thereof, from Boston, Somerville, Lowell, Mansfield, Cambridge, Andover, and Everett, MA to Enosburg Falls, East Berkshire, Morrisville, and Troy, VT, (5) *milk and cream*, when transported on a vehicle on which commodities other than those specified in section 203(b)(6) of the Interstate Commerce Act are also transported at the same time for compensation, and products of milk and cream (except butter and cheese) in containers or in bulk, from Abington and South Boston, VA, Greeneville and Readyville, TN, Litchfield, IL, and points in IN, OH, MI and those in that part of NY north of Sullivan, Dutchess, and Ulster Counties, NY to Portland and Bangor, ME, Manchester, NH, and points in MA, CT, RI, and those in that part of NY north of Sullivan, Dutchess, and Ulster Counties, NY; and (6) *empty containers* used in the transportation of milk and cream and products thereof, from the above-specified destination points, to the above-specified origin points, (7) *milk and milk products*, in tank-type vehicle containers, from Somerville, MA to points in MA, CT, and RI; and (8) *empty containers* for milk and milk products, from points in MA, CT, and RI to Somerville, MA, (9) *milk and milk products*, in bulk, in tank vehicles, between points in that part of NY north of Sullivan, Ulster and Dutchess Counties, NY, on the one hand, and, on the other, points in VT, NH (except Manchester, NH) and ME (except Portland and Bangor, ME), (10) *milk and milk products*, except butter and cheese, and *empty containers*, between points in ME, VT and NH, on the one hand, and, on the other, points in CT, MA and RI; and (11) *soap, acids, chemicals, oil and grease*, in containers,

from Providence and East Providence, RI to points in that part of MA on and east of MA Hwy 12 and those in CT on and east of US Hwy 5. RESTRICTION: The authority granted immediately above to transport soap, oil, and grease, in containers, does not authorize transportation of such commodities to Boston, MA, points within 15 miles of Boston, or points in MA within 10 miles of the RI State line. By the instant petition, petitioner seeks to modify the certificate as follows: delete restrictions in paragraphs (5), (9), and (10).

Permanent Authority Decisions Volume Decision-Notice

Decided: June 3, 1980.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the *Federal Register*. Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below), and specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an

application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 130638F, filed October 25, 1979. Applicant's name and address are LAWRY AIR FREIGHT, INC., dba. LAWRY AIR FREIGHT, 16 Union Ave.,

Westfield, MA 01085. The name under which operations will be performed is LAWRY AIR FREIGHT, INC., dba. LAWRY AIR FREIGHT. Applicant is represented by James M. Burns in this proceeding whose address is Suite 413, 1383 Main St., Springfield, MA 01103. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Mary L. O'Connell, President, Director, and principal shareholder (same address as applicant), William Lawry, Treasurer, Assistant Clerk and Director and principal shareholder (same address as applicant), and Francis Mirkin, Clerk, 95 State St., Springfield, MA 01103. The daily operations will be managed by Mary L. O'Connell and William Lawry whose business address is same as applicant. Applicant is affiliated with the following shipper or warehouse: None

MC 130851F, filed March 10, 1980. Applicant: AAA INTERNATIONAL TRAVEL SERVICE, 201 Kings Highway S., Cherry Hill, NJ 08034. Representative: Joseph R. Adamson (same address as applicant). To engage in operations, in interstate or foreign commerce, as a broker, at Cherry Hill and Vineland, NJ, in arranging for the transportation, by motor vehicle, of passengers and their baggage, in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at Cherry Hill and Vineland, NJ, and extending to points in the U.S. (including AK, but excluding HI). (Hearing site: Camden, NJ, or Philadelphia, PA.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauk Tours, Inc., Extension New York, NY, 54 M.C.C. 291 (1952)*.

MC 130862F, filed April 18, 1980. Applicant: SCENIC TOURS, INC., 613 Oak St., Aberdeen, WA 98520. Representative: S. Harrison Kahn, 1511 K St., NW, Suite 733 Investment Bldg., Washington, DC 20005. To operate in interstate or foreign commerce as a broker, at Aberdeen, WA, to arrange for the transportation of passengers and their baggage, in special and charter operations, between points in the U.S. (including AK and HI). (Hearing site: Aberdeen, Washington.)

MC 130863F, filed April 14, 1980. Applicant: RICHARD L. JONES AND JANET L. JONES, d.b.a. FIRST STATE TOURS, P.O. Box 298, Magnolia, DE 19962. Representative: Robert L.

Halbrook, P.O. Box 272, Georgetown, DE 19947. To operate, in interstate or foreign commerce, as a broker at Frederica, DE, to arrange for the transportation of passengers and their baggage, between points in Kent County and Sussex County, DE, on the one hand, and, on the other, points in the U.S. (including AK and HI). (Hearing site: Georgetown, DE.)

MC 130870F, filed April 21, 1980. Applicant: FIESTA BUS TOURS, 922 Oak Glen Dr., Peoria, IL 61614. Representative: Kathryn Mehl (same address as applicant). To engage in operations, in interstate or foreign commerce, as a broker, at Peoria, IL, in arranging for the transportation of passengers and their baggage, in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at Peoria, Macomb, Pekin, Galesburg, Morton, Bloomington, Decatur, Normal, Charleston, and Lincoln, IL, and extending to points in the U.S. (except AK and HI). (Hearing site: Peoria or Springfield, IL.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauk Tours, Inc., Extension New York, NY, 54 M.C.C. 291 (1952)*.

MC 130872F, filed April 23, 1980. Applicant's name and address are: LILE INTERNATIONAL COMPANIES, 15605 SW 72nd Ave, Tigard, OR 97223. The name under which operations will be performed is: LILE INTERNATIONAL COMPANIES. Applicant is represented by Robert J. Gallagher, in this proceeding, whose address is Suite 1112, 1000 Connecticut Ave, NW, Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Wendell B. Lile, Chairman of the Board, Director & Stockholder (same address as applicant), James B. Larsen, President, Director & Stockholder (same address as applicant), Joseph C. Sopko, Treasurer & Stockholder, Louise Awmiller, Assistant Secretary (same address as applicant), D.A. Enger, Director, P.O. Box 24186, Seattle, WA, 98124, and James Schueter, Director, P.O. Box 3301, Portland, OR 97209. The daily operations will be managed by James B. Larsen, whose business address is (same as applicant). Applicant is affiliated with the following shipper or warehouse: Applicant is an agent for North American Van Lines.

MC 130884F, filed May 6, 1980. Applicant: ST. LAWRENCE TOURS,

INC., 644 Coffeen St., Watertown, NY 13601. Representative: Lawrence E. Smith, 644 Coffeen St., Box 381, Watertown, NY 13601. To engage in operation, in interstate or foreign commerce, as a *broker*, at Watertown, NY, in arranging for transportation by motor vehicle, of *passengers and their baggage*, between points in Jefferson, Lewis, St. Lawrence, Oswego, Franklin and Essex Counties, NY, on the one hand, and, on the other, points in the U.S. (including AK and HI). (Hearing site: Watertown or Syracuse, NY.)

MC 130885F, filed May 6, 1980.

Applicant: SUN CITY TRAVEL SERVICE, DIVISION OF ARIZONA WORLD TRAVEL, INC., 10777 Grand Ave., Sun City, AZ 85351. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425-13th St., N.W., Washington, DC 20004. To engage in operation, in interstate or foreign commerce, as a *broker*, at Sun City, Sun City West, Phoenix, Scottsdale, Tempe, Peoria, and Glendale, AZ, to arrange for the transportation of *passengers and their baggage*, beginning and ending at Sun City, Sun City West, Phoenix, Scottsdale, Tempe, Peoria, and Glendale, AZ, and extending between points in the U.S. (including AK and HI). (Hearing site: Phoenix, AZ.)

MC 130914F, filed May 19, 1980.

Applicant's name and address INTERSTATE SHIPPERS SERVICE, INC., 3557 South Fairplay Way, Aurora, CO 80014. The name under which operations will be performed is INTERSTATE SHIPPERS SERVICE, INC. Applicant is represented by Sidney J. Thomason in this proceeding whose address is 3557 South Fairplay Way, Aurora, CO 80014. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Sidney J. Thomason, President and shareholder, Norma R. Thomason, Vice President and shareholder (same address as applicant). The daily operations will be managed by Sidney J. Thomason whose business address is 11460 West 44th Ave., Wheatridge, CO 80033. Applicant is affiliated with the following shipper or warehouse: None.

MC 130915F, filed May 19, 1980.

Applicant's name and address are BUG EYE TRANSPORTATION, LTD., 4518 South Halsted St., Chicago, IL, 60609. The name under which operations will be performed is BUG EYE TRANSPORTATION, LTD. Applicant is represented by Anthony E. Young in this proceeding whose address is 29 South LaSalle St., Suite 350, Chicago, IL, 60603.

Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Joseph Bugyi, President/Treasurer/Director and sole shareholder, and Mary Bugyi, Director and Secretary, whose addresses are the same as the applicant. The daily operations will be managed by Joseph Bugyi, whose address is the same as the applicant. Applicant is affiliated with the following shipper or warehouse: None.

Permanent Authority Decisions Volume Decision-Notice

Decided: May 27, 1980.

The following broker, freight forwarder or water carrier applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the *Federal Register*. Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. A protest under these rules shall comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below, and specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed,

and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exceptions of those applications involving duly noted problems (e.g. unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protest, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2, Members Chandler, Liberman, and Eaton.

MC 130671F, filed November 14, 1979. Applicant's name and address are THOMAS J. FITZGIBBONS, d.b.a.

FITZGIBBONS TRANSPORTATION, INC., East Sharon & Mosteller Rd., Cincinnati, OH 45241. The name under which operations will be performed is FITZGIBBONS TRANSPORTATION, INC. Applicant is not represented by an attorney in this proceeding. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Thomas J. Fitzgibbons, President and shareholder, Michael J. Fitzgibbons, Vice President and shareholder, and William E. Moelchert, Secretary-Treasurer and shareholder (all at the same address as applicant). The daily operations will be managed by Thomas J. Fitzgibbons, whose business address is East Sharon & Mosteller Rd., Cincinnati, OH 45241. Applicant is affiliated with the following shipper or warehouse: None.

MC 130882F, filed April 28, 1980. Applicant's name and address are INTERSTATE VAN LINES, INC., 5801 Rolling Road, West Springfield, VA 22152. The name under which operations will be performed is INTERSTATE VAN LINES, INC. Applicant is represented by Marshall Kragen in this proceeding whose address is 1835 K Street, NW., Suite 600, Washington, DC 20006. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Arthur E. Morrisette, Sr., President, Treasurer and Director; Arthur E. Morrisette, Jr., Vice President and Director; Kenneth Morrisette, Vice President & Director; Donald J. Morrisette, Secretary and Director. The above officers business address is 5801 Rolling Road, West Springfield, VA 22152. The stock of the company is held by IVL Corporation, of same address as applicant. The daily operations will be managed by Donald Morrisette whose business address is 5801 Rolling Road, West Springfield, VA 22152. Applicant is affiliated with the following shipper or warehouse: None.

MC 130780F, filed January 21, 1980. Applicant's name and address are PITTSBURGH WAREHOUSE & VAN CO., INC., 4433-41 Howley St., Pittsburgh, PA 15224. The name under which operations will be performed is PLYMOUTH INTERNATIONAL TPTN. CORP. Applicant is represented by Robert J. Gallagher, Suite 1200, 1000 Connecticut Ave., N.W., Washington, DC 20036. Following are the names and business addresses for all persons who are officers and directors, partners

(including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Charles J. Guttilla, Sr., President and shareholder, Margaret Guttilla, Vice President and shareholder, Charles J. Guttilla, Jr., Executive Vice President and shareholder, and Clifford H. Lange, Director and shareholder, (same address as applicant). The daily operations will be managed by Clifford H. Lange and Charles J. Guttilla, Jr., whose business address is 4439 Howley St., Pittsburgh, PA 15224. Applicant is affiliated with the following shipper or warehouse: None.

MC 130892F, filed May 5, 1980. Applicant: CENTURY 21 TRAVEL, INC., 528 N. Washington Street, Alexandria, VA 22314. Representative: James I. Burkhardt, 803 Prince Street, Alexandria, VA 22313. To engage in operations, in interstate or foreign commerce, as a *broker*, at Alexandria, VA, in arranging for the transportation, by motor vehicle, of passengers and their baggage in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at Alexandria, VA, and extending to points in the U.S. (including AK and HI). (Hearing site: Washington, DC.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauco Tours, Inc., Extension—New York, N.Y.*, 54 M.C.C. 291 (1952).

MC 130894F, filed May 5, 1980. Applicant's name and address are RIGHT-O-WAY, INC., 566 Valley St., Orange, NJ, 07050. The name under which operations will be performed is RIGHT-O-WAY, INC. Applicant is represented by Ronald I. Shapss, in this proceeding, whose address is 450 Seventh Ave., New York, NY 10001. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Lawrence Weir, President/Director, Robert Serra, Vice-President, Treasurer, and Director, and Ronald Oyama, Secretary, whose addresses are the same as the applicant. The daily operations will be managed by Lawrence Weir, whose address is the same as the applicant. Applicant is affiliated with the following shipper or warehouse: Right-O-Way, Inc., which is a licensed air freight forwarder (CAB).

MC 130895F, filed May 5, 1980. Applicant's name and address are MARGIN LEASING, INC., 21 Baltic Rd., Worcester, MA 01607. The name under

which operations will be performed is MARGIN LEASING, INC. Applicant is represented by Ronald I. Shapss, in this proceeding, whose address is 450 Seventh Ave., New York, NY 10001. Following are the names and business addresses for all persons who are officers and directors, partners (including limited or "silent" partners), and first five principal shareholders, with their appropriate titles: Ben Chojnicki, President, Director, and sole stockholder, and Virginia Chojnicki, Secretary and Director, whose addresses are the same as the applicant, and Francis Thompson, Director, whose address is 37 Atlantic Ave., Swampscott, MA. The daily operations will be managed by Ben Chojnicki, whose business address is the same as the applicant. Applicant is affiliated with the following shipper or warehouse: None.

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this Federal Register notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 35320 (Deviation No. 31), T.I.M.E.—DC, INC., P.O. Box 2550, Lubbock, TX 79408, filed April 14, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From St. Louis, MO over US Hwy 50 to Cincinnati, OH and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From St. Louis, MO across the Mississippi River to E. St. Louis, IL, then over IL Hwy 15 to Mt. Vernon, IL, then over US Hwy 460 to McLeansboro, IL, then over IL Hwy 142 to junction IL Hwy 13, then over IL Hwy 13 to the IL-KY State line, then over KY Hwy 56 to junction US Hwy 41A, then over US Hwy 41A to Hopkinsville, KY,

then over US Hwy 41 to Nashville, TN, then over US Hwy 31W to junction US Hwy 42, then over US Hwy 42 to Cincinnati, OH and return over the same route.

MC 35320 (Deviation No. 32), T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408, filed April 14, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From South Bend, IN over US Hwy 31 to junction Interstate Hwy 74, then over Interstate Hwy 74 to Cincinnati, OH and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From South Bend, IN over US Hwy 20 to junction US Hwy 127, then over US Hwy 127 to Cincinnati, OH and return over the same route.

MC 35320 (Deviation No. 33), T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408, filed April 14, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From South Bend, IN over US Hwy 31 to Indianapolis, IN, then over Interstate Hwy 65 to Louisville, KY and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From South Bend, IN over US Hwy 20 to junction IL Hwy 1, then over IL Hwy 1 to junction US Hwy 50, then over US Hwy 50 to junction US Hwy 41, then over US Hwy 41 to junction US Hwy 460, then over US Hwy 460 to junction US Hwy 231, then over US Hwy 231 to junction IN Hwy 56, then over IN Hwy 56 to junction US Hwy 150, then over US Hwy 150 to Louisville, KY and return over the same route.

MC 35320 (Deviation No. 34), T.I.M.E.-DC, INC., P.O. Box 2550, Lubbock, TX 79408, filed April 14, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: (1) From South Bend, IN over US Hwy 31 to Indianapolis, IN, then over IN Hwy 67 to junction IN Hwy 57, then over IN Hwy 57 to junction US Hwy 41, then over US Hwy 41 to Evansville, IN, and (2) From South Bend, IN over US Hwy 31 to Indianapolis, IN, then over Interstate Hwy 70 to junction combined US Hwys 41/150, then over combined US Hwys 41/150 to junction US Hwy 41, then over US Hwy 41 to Evansville, IN and return

over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From South Bend, IN over US Hwy 20 to junction IL Hwy 1, then over IL Hwy 1 to junction US Hwy 50, then over US Hwy 50 to junction US Hwy 41, then over US Hwy 41 to Evansville, IN and return over the same route.

MC 48958 (Deviation No. 94), ILLINOIS-CALIFORNIA EXPRESS, INC., P.O. Box 9050, 601 Ross St., Amarillo, TX 79189, filed April 21, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction U.S. Hwys 85 and 64 over U.S. Hwy 64 to junction U.S. Hwy 54, then over U.S. Hwy 54 to Liberal, KS, then southwest over U.S. Hwy 54 to junction NM Hwy 39, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From junction U.S. Hwys 85 and 64 over U.S. Hwy 85 to junction NM Hwy 58, then over NM Hwy 58 to junction NM Hwy 39, then over U.S. Hwy 39 to junction U.S. Hwy 54 and return over the same route.

MC 48958 (Deviation No. 95), ILLINOIS-CALIFORNIA EXPRESS, INC., P.O. Box 9050, 601 Ross St., Amarillo, TX 79189, filed April 23, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: (1) From Denver, CO over U.S. Hwy 287 to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 83, then over U.S. Hwy 83 to junction OK Hwy 3, then over OK Hwy 3 to junction OK Hwy 8, then over OK Hwy 8 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Oklahoma City, OK, and (2) From Denver, CO over U.S. Hwy 287 to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 83, then over U.S. Hwy 83 to junction U.S. Hwy 64, then over U.S. Hwy 64 to junction U.S. Hwy 283, then over U.S. Hwy 283, to junction OK Hwy 3, then over OK Hwy 3 to junction OK Hwy 8, then over OK Hwy 8 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Oklahoma City, OK and return over the same routes for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Denver, CO over U.S. Hwy 85 to junction NM Hwy 58, then over NM Hwy 58 to

junction NM Hwy 39, then over NM Hwy 39 to junction U.S. Hwy 66, then over U.S. Hwy 66 to junction U.S. Hwy 287, then over U.S. Hwy 287 to junction TX Hwy 79, then over TX Hwy 79 to junction OK Hwy 79, then over OK Hwy 79 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction OK Hwy 76, then over OK Hwy 76 to Oklahoma City, OK and return over the same route.

MC 80430 (Deviation No. 29), GATEWAY TRANSPORTATION CO., INC., 455 Park Plaza Drive, La Crosse, WI 54601, filed April 21, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Philadelphia, PA over Interstate Hwy 95 to Savannah, GA and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Philadelphia, PA over U.S. Hwy 30 to Pittsburgh, PA then over PA Hwy 65 to junction PA Hwy 351, then over PA Hwy 351 to junction OH Hwy 170, then over OH Hwy 170 to Youngstown, OH, then over U.S. Hwy 62 to junction U.S. Hwy 30, then over U.S. Hwy 30 to Lima, OH, then over U.S. Hwy 25 to Cincinnati, OH, then over U.S. Hwy 50 to Seymour, IN, then over U.S. Hwy 31 to Louisville, KY, then over U.S. Hwy 31W to Nashville, TN, then over Interstate Hwys 24 and 75 to Atlanta, GA then over GA Hwys 42 and 87 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Savannah, GA and return over the same route.

MC 98327 (Deviation No. 5), SYSTEM 99, 8201 Edgewater Drive, Oakland, CA 94621, filed May 5, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Roswell, NM over U.S. Hwy 380 to junction U.S. Hwy 84, then over U.S. Hwy 84 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Ft. Worth, TX and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Roswell, NM over U.S. Hwy 70 to junction U.S. Hwy 60, then over U.S. Hwy 60 to junction Interstate Hwy 27, then over Interstate Hwy 27 to Amarillo, TX, then over U.S. Hwy 287 to Ft. Worth, TX and return over the same route.

Note.—A portion of this deviation is premised on a grant of temporary authority under section 210(a)(b). If applicant's right to

operate all or part of the authority expires, this deviation, if authorized, will likewise expire.

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this Federal Register notice.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 41638 (Deviation No. 6), DELUXE TRAILWAYS, INC., 1718 S. Clark St., Chicago, IL 60616, filed April 28, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction IL Hwys 47 & 48 near Cisco, IL over Interstate Hwy 72 to junction US Hwy 51, then over US Hwy 51 to Decatur, IL and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From junction IL Hwys 47 & 48 near Cisco, IL over IL Hwy 48 to Decatur, IL and return over the same route.

Motor Carrier Intrastate Application(s)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application

is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

* New York Docket No. T-2138, filed March 14, 1980. Applicant: STAATS EXPRESS, INC., 507 South Street, Rensselaer, NY 12144. Representative: Neil D. Breslin, 600 Broadway, Albany, NY 12207. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities, between Albany, Schenectady, Rensselaer and Columbia Counties, on the one hand, and, on the other, all points in Ulster and Dutchess Counties. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to Department of Transportation, 1220 Washington Ave., State Campus Bldg. #4, Room G-21, Albany, NY 12232, and should not be addressed to the Interstate Commerce Commission.

New York Docket No. T-6996, filed November 26, 1979. Applicant: CARRUTHERS MOVERS, INC., 205 East Hiawatha Blvd., Syracuse, NY 13208. Representative: Roy D. Pinsky, 1020 State Tower Bldg., Syracuse, NY 13202. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: Household goods, between all points in the State. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to New York State Department of Transportation, 1220 Washington Ave., State Campus Bldg. #4, Room G-21, Albany, NY 12232, and should not be directed to the Interstate Commerce Commission.

Permanent Authority Decisions; Decision-Notice

Substitution Applications: Single-Line; Service for Existing Joint-Line Service

Decided: May 23, 1980.

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting

party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately preceding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition; however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e. applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petition containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by the Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions, or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act).

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 4, Members Fitzpatrick, Fisher, and Dowell. Member Fisher not participating.

MC 42487 (Sub-973F), filed January 21, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *Classes A and B explosives*, between Wells, NV, and Salt Lake City, UT, over Interstate Hwy 80, serving no intermediate points and serving Wells for the purpose of joinder only. The authority granted here will expire five (5) years from the date of issuance. (Hearing site: Salt Lake City, UT.)

Note.—Applicant intends to tack the

authority granted here with its existing authority. The sole purpose of this application is to substitute single line for joint line operations.

MC 115840 (Sub-118F), filed January 2, 1980. Applicant: COLONIAL FAST FREIGHT LINES, INC., P.O. Box 22168, Knoxville, TN 37922. Representative: Leonard Carroll, P.O. Box 10327, Birmingham, AL 35202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, between points in AL, LA, and TX. (Hearing site: Birmingham, AL, or Washington, DC.)

Note.—The purpose of this application is to substitute single-line for joint-line operations.

MC 129480 (Sub-50F), filed January 8, 1980. Applicant: TRI-LINE EXPRESSWAYS LTD., 9500 40th St., S.E., Calgary, Alberta, Canada T2H 2J1. Representative: Edward T. Lyons, Jr., 1600 Lincoln Center Bldg., 1660 Lincoln St., Denver, CO 80264. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting (1) *such commodities* as are dealt in or used by steel mills and metal fabricators, (except commodities in bulk, in tank vehicles), between points on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in AL (except Anniston, Birmingham, Decatur, Gadsden and Tuscaloosa), AR, IA, IL, KY, LA, MO, MS, and TN, (2) *fabricated steel articles*, between points on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in IN, OH, and PA, points in the Lower Peninsula of MI, and points in WI on and south of U.S. Highway 8 (except Kenosha, Milwaukee and Racine), and (3) *farm machinery and parts for farm machinery*, between points on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in IA, IL, KS, MN, MO, NE, and SD, restricted in (1), (2), and (3) above to traffic which because of size or weight requires the use of special equipment. (Hearing site: Denver, CO.)

Note.—The purpose of this application is to substitute single-line for joint-line operations.

By the Commission.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18939 Filed 6-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Revised Exemption No. 174]

Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

June 19, 1980.

To All Railroads:

It appearing, That the railroads named herein own numerous plain flat cars under 200,000 pounds capacity; that under present conditions, there are surpluses of these cars on their lines; that return of these cars to the car owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain flat cars under 200,000 pounds capacity, described in the Official Railway Equipment Register, ICC-RER No. 6410-B, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "FM," flat cars under 200,000 pounds capacity, and which bear the reporting marks listed below, may be used without regard to the requirements of Car Service Rules 1 and 2.

* Illinois Terminal Railroad Company
Reporting Marks: ITC
* Missouri-Kansas-Texas Railroad Company
Reporting Marks: MKT, BKTY
Southern Railway Company
Reporting Marks: SOU-CG-NS-SA-TA&G

Effective June 15, 1980, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., June 13, 1980.
Interstate Commerce Commission.
Robert S. Turkington,
Agent.

[FR Doc. 80-18943 Filed 6-23-80; 8:45 am]
BILLING CODE 7035-01-M

Long and Short-Haul Application for Relief (Formerly Fourth Section Application)

June 19, 1980.

This application for long-and-short-haul relief has been filed with the I.C.C. Protests are due at the I.C.C. on or before July 9, 1980.

No. 43834, Southwestern Freight Bureau, Agent's No. B-76, on calcium chloride, in carloads, between stations in Louisiana and Texas on the one hand,

* Addition.

and, on the other, Bay City and Midland Michigan in Supplement 60 to its Tarif ICC SWFB 4616, effective July 16, 1980. Grounds for relief—rate relationships.

By the Commission.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-18933 Filed 6-23-80; 8:45 am]
BILLING CODE 7035-01-M

Waiver of Accounting and Reporting Requirements for Certain Class I and Class II Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission's Bureau of Accounts is announcing by this Notice that it will consider requests for relief from the Class I and Class II accounting and reporting regulations for motor carriers of property which derive the majority of their revenues under a purchased transportation arrangement.

ADDRESS: Submit written requests to Mr. Bryan Brown, Jr., Chief, Section of Accounting and Reporting, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., Tel: (202) 275-7448.

SUPPLEMENTAL INFORMATION: The Bureau of Accounts has received various requests from Class I and II Households Goods Agents asking for relief from our accounting and reporting rules. These carriers claim that because the majority of their revenues are earned under a purchased transportation arrangement, there is a duplication of accounting and reporting. This is due to the fact that their revenues are reported both on their books and on the books of another (principal) carrier.

These revenues earned under agent agreements are classified as Account 3400 Revenues by the agent and Account 3100 Revenues by the principal. Since this information is reported to the Commission and the Commission is basically interested in the data furnished by carriers that are primarily principals, the reporting burden placed on the agents outweighs the benefits derived the Class I and II reports they must file.

The Bureau of Accounts has established a policy to grant relief for carriers operating predominantly under a purchased transportation agreement. The objective of our granting relief from the reporting and accounting regulations

to such carriers is to relieve the burden on the carrier and to reduce the paperwork burden on the Commission. Carriers in this situation may request relief from the accounting and reporting regulations applicable to Class I and II carriers. Carriers desiring such relief should submit their request with the following information:

(1) Estimated total operating revenues during current year (Accounts 3100, 3200, 3300, 3400 and 3900, for I-27 and I-28A carriers), or estimated total carrier operating revenues during current year (Subdivisions of the 3800 series of accounts under activities 1, Interstate, 2, Intrastate, 3, Local, and 4, Indirect Operating for I-28B carriers);

(2) Estimated revenues during current year from intercity transportation for other motor carriers (Account 3400 for all carriers).

Carriers who are granted relief will be required to file annual report Form M-3.

Dated: May 29, 1980.

James B. Thomas, Jr.,
Director, Bureau of Accounts.

[FR Doc. 80-18934 Filed 6-23-80; 8:45 am]
BILLING CODE 7035-01-M

Permanent Authority Decisions—Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the *Federal Register*. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected*. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular

facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected market place. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after June 24, 1980.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its

proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before July 24, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notice on or before July 24, 1980, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 183

Decided: May 19, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 57315 (Sub-27F), filed January 10, 1980, previously noticed in the *Federal Register* issue of April 8, 1980.
Applicant: TRI-STATE TRANSPORT,

INC., 140 Wales Ave., Avon, MA 02322.
Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108.
Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), having value for salvage and reclamation purposes only, between points in CT, ME, MA, NH, NJ, NY, RI, and VT. (Hearing site: Boston, MA.)

Note.—This republication indicates the correct commodity description.

MC 94265 (Sub-343F), filed March 14, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *foodstuffs*, from the facilities of Texsun Corporation, at or near Plymouth, IN, to points in IL, IA, KY, MI, MN, MO, and OH. (Hearing site: Dallas, TX, or Washington, DC.)

MC 105045 (Sub-143F), filed May 14, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania St., Evansville, IN 47701. Representative: Richard C. McGinnis, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *steel joists and steel decking*, and (2) *accessories* used in the installation of the commodities in (1) above, from the facilities of Nucor Corporation, at or near Grapeland, TX, to points in AL, AR, AZ, FL, LA, MS, NM, OK, and TX. (Hearing site: Dallas, TX.)

MC 106074 (Sub-149F), filed March 14, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Road and U.S. Hwy. 221, South, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting (1) *fiberglass and fiberglass products*, from the facilities of Certain Teed Corporation, at Wichita Falls, TX, to points in AZ, CA, CO, FL, GA, IA, IL, IN, KS, MN, MO, NE, NC, NV, OH, PA, SC, UT, MI, VA, WI, and those points in TN, on and east of U.S. Interstate Hwy 65, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of fiberglass and fiberglass products, in the reverse direction, restricted to traffic originating at or destined to the facilities of Certain Teed Corporation. (Hearing site: Fort Worth, TX, or Washington, DC.)

Note.—Dual operations may be involved.

MC 106674 (Sub-474F), filed March 17, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson, (same address as applicant). Transporting (1) *iron and steel articles*,

and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in tank vehicles), between Perth Amboy, NJ, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 106674 (Sub-475F), filed March 17, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson, (same address as applicant). Transporting (1) *construction materials*, and (2) *supplies* used in the manufacture and distribution of the commodities in (1) above, (except in bulk), between the facilities of the Celotex Corporation, at or near Deposit, NY, on the one hand, and, on the other, points in CT, MD, MA, NH, NJ, OH, PA, RI, VT, VA, and WV. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 107295 (Sub-975F), filed March 13, 1980. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Todd A. Peterman (same address as applicant). Transporting (1) *doors and door frames*, and (2) *parts, accessories, materials, and supplies* used in the manufacture, distribution, and sale of the commodities in (1) above, between Colorado Springs, CO, Toledo, OH, and points in Van Buren County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Denver, CO.)

MC 114045 (Sub-561F), filed March 14, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart, (same address as applicant). Transporting (1) *alcoholic liquors*, and (2) *materials, equipment, and supplies* used in the production and distribution of the commodities in (1) above, (except in bulk, in tank vehicles) (a) between Ft. Smith, AR, on the one hand, and, on the other, points in CT, DE, IL, IN, KS, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, OH, OK, PA, RI, TN, TX, VT, VA, WV, WI, and DC, (b) between Bardstown and Louisville, KY, on the one hand, and, on the other, points in AR, IL, IN, KY, MI, NY, OH, PA, TN, and WV, (c) between New Orleans, LA, on the one hand, and, on the other, points in AL, AR, AZ, CA, FL, GA, LA, MS, NM, OK, and TX, and (d) between Plainfield, IL, on the one hand, and, on the other, points in IN, KS, MI, MO, NM, OK, and WI, restricted to traffic originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Dallas, TX.)

MC 114334 (Sub-77F), filed March 14, 1980. Applicant: BUILDERS

TRANSPORTATION COMPANY (a corporation), 3710 Tulane Rd., Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Bldg., Memphis, TN 38103. Transporting *precast and prestressed concrete products*, from Memphis, TN, to points in MO and IL. (Hearing site: Memphis, TN.)

MC 114334 (Sub-78F), filed March 14, 1980. Applicant: BUILDERS TRANSPORTATION COMPANY (a corporation), 3710 Tulane Rd., Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Bldg., Memphis, TN 38103. Transporting *pipe*, from the facilities of Republic Steel, at or near Counce, TN, to points in OK and TX. (Hearing site: Memphis, TN.)

MC 117574 (Sub-351), filed February 8, 1980. Applicant: DAILY EXPRESS, INC., P.O. Box 39, 1076 Harrisburg Pike, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same address as applicant). Transporting (1) *self-propelled vehicles*, (2) *attachments and parts* used for self-propelled vehicles, and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities of Hertz Equipment Rental. (Hearing site: Tampa, FL, or Washington, DC.)

MC 121664 (Sub-117F), filed March 17, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846 Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave. South, Birmingham, AL 35233. Transporting (1) *steel tubing*, from Pine Bluff, AR, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX; and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Birmingham, AL.)

MC 133565 (Sub-17F), filed December 26, 1979, previously published in the *Federal Register* issue of April 15, 1980. Applicant: TRUE TRANSPORT, INC., 15 Stockton St., Newark, NJ 07101. Representative: Charles J. Williams, 1815 Front St., Scotch Plains, NJ 07076. Transporting (1) *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), restricted to traffic having a prior or subsequent movement by water, and (2) *empty containers, trailers, and trailer chassis*, between New York, NY, Philadelphia, PA, and Baltimore, MD, and Norfolk, VA, on the one hand, and, on the other, points in CO, IL, IN, IA, KS, KY, MI, MN, MO, NE,

ND, OH, SD, WI, and points in that part of PA on and west of a line beginning at the PA-NY State line at or near Lawrenceville, PA, and extending along U.S. Hwy 15 to junction U.S. Hwy 11 at or near Camp Hill, PA, then along U.S. Hwy 11 to the PA-MD State line. (Hearing site: New York, NY.)

Note.—This republication modifies the territorial description.

MC 133565 (Sub-18F), filed December 27, 1979, previously noticed in the FR issue of April 15, 1980. Applicant: TRUE TRANSPORT, INC., 15 Stockton St., Newark, NJ 07101. Representative: Charles J. Williams, 1815 Front St., Scotch Plains, NJ 07076. Transporting (1) *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in containers or in trailers, having a prior or subsequent movement by water, and (2) *empty containers, trailers, and trailer chassis*, between New York, NY, Philadelphia, PA, and Baltimore, MD, on the one hand, and, on the other, points in PA. (Hearing site: New York, NY.)

Note.—This republication indicates the correct territorial description.

MC 135524 (Sub-118F), filed March 14, 1980. Applicant: G. F. TRUCKING CO. (a corporation), P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting (1) *iron and steel articles*, from the facilities of Century Tube Corporation, at or near Pine Bluff, AR, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. (Hearing site: Columbus, OH, or Little Rock, AR.)

MC 135524 (Sub-119F), filed March 17, 1980. Applicant: G. F. TRUCKING CO. (a corporation), P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting (1) *iron and steel articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Ferndale, MI, on the one hand, and, on the other points, in IA, ID, IL, IN, MN, MT, ND, NE, OR, SD, WA, WI, and WY. (Hearing site: Columbus or Cleveland, OH.)

MC 135524 (Sub-120F), filed March 17, 1980. Applicant: G. F. TRUCKING CO. (a corporation), P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914

Salt Springs Rd., Youngstown, OH 44509. Transporting *iron and steel articles*, between Houston, TX, Chicago, IL, and Detroit, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Columbus, OH, or Houston, TX.)

MC 135524 (Sub-122F), filed March 17, 1980. Applicant: G. F. TRUCKING (a corporation), P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting (1) *lumber, plywood, particleboard, composition board, paneling and wallboard*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, between points in MS and AL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Columbus, OH, or Jackson, MS.)

MC 138104 (Sub-96F), filed March 17, 1980. Applicant: MOORE TRANSPORTATION CO., INC., 3509 Grove St., Fort Worth, TX 76106. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. Transporting (1) *trailers, and trailer chassis* (except those designed to be drawn by passenger automobiles), and *trailer converter dollies*, (b) *bodies, hoists, and containers*, from the facilities of Heil Company, at or near Athens, TN, Lancaster, PA, Milwaukee, WI, and Tishomingo, MS, to points in the U.S. (including AK, but excluding HI), (2) *commodities* used in the manufacture of the commodities named in (1) above, from points in the U.S. (including AK, but excluding HI), to the facilities of Heil Company, at points named in (1) above, and (3) *trailers, and trailer chassis* (except those designed to be drawn by passenger automobiles) and *trailer converted dollies*, between points in the U.S. (including AK, but excluding HI), restricted to traffic originating at or destined to the named facilities and distributorships of Heil Company. (Hearing site: Fort Worth, TX, or Memphis, TN.)

MC 142065 (Sub-13F), filed March 14, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Box Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. *Contract carrier*, transporting *processed meats*, from Houston, TX, to the facilities of Peter Eckrich and Sons, Inc., at or near (Allen Township), in Hillsdale County, MI, under a continuing contract(s) with Peter Eckrich and Sons, Inc., of Fort Wayne, IN. (Hearing site: Fort Wayne, IN, or Ft. Smith, AR.)

MC 142835 (Sub-4F), filed March 14, 1980. Applicant: CARSON MOTOR LINES, INC., P.O. Box 337, Auburndale, FL 33823. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. Transporting *bananas*, from Tampa, FL, to points in DE, KY, MD, NJ, NY, OH, TN, and VA. (Hearing site: Washington, DC.)

MC 146465 (Sub-7F), filed March 14, 1980. Applicant: LAWRENCE PILGRIM, d.b.a. PILGRIM TRUCKING CO., P.O. Box 877, Cleveland, GA 30528. Representative: Jeffrey Kohlman, Suite 508, 1447 Peachtree St., N.E., Atlanta, GA 30309. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Hoover Universal, Inc. (Hearing site: Atlanta, GA, or Louisville, KY.)

MC 148445 (Sub-3F), filed March 14, 1980. Applicant: WLD TRUCKING CO. (a corporation), 4527 N. 16th St., Phoenix, AZ 85064. Representative: Phil B. Hammond, 3003 N. Central, Suite 2201, Phoenix, AZ 85003. Transporting (1) *materials, equipment, and supplies* used in the manufacture of wooden doors, and (2) *parts* for wooden door, (a) from points in the U.S. (except AK and HI), to the facilities of Walled Lake Door Company, at Orange, CA, (b) between the facilities of Walled Lake Door Company, at or near Tupelo, MS, Cameron, TX, Mobile, AL, Gila Bend, AZ, and Orange, CA, and (3) *wooden doors and parts* for wooden doors, from the facilities of Walled Lake Door Company, at Orange, CA, to points in the U.S. (except AK and HI). (Hearing site: Phoenix, AZ.)

Volume No. 193

Decided: May 14, 1980.

By the Commission Review Board Number 3, Members Parker, Fortier and Hill. Member Parker not participating.

MC 2484 (Sub-55F), filed March 17, 1980. Applicant: E & L TRANSPORT COMPANY, A Corporation, 23420 Ford Rd., Dearborn Heights, MI 48127. Representative: Eugene C. Ewald, 100 West Long Lake Rd.—Suite 102, Bloomfield Hills, MI 48013. Transporting *electric motor vehicles*, in truckaway service, from Cleveland, OH, to points in the U.S. (except AK and HI). (Hearing site: Detroit, MI.)

MC 13134 (Sub-88F), filed March 18, 1980. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: James M. Burtch, 100 E.

Broad St., Suite 1800, Columbus, OH 43215. Transporting (1) *refractory products*, from the facilities of C-E Refractories Division of Combustion Engineering, Inc., at or near Port Kennedy, PA, to points in OH, MI, IN, IL, KY and WV, and (2) *minerals and ores*, from the facilities of C-E Minerals Division of Combustion Engineering, Inc., at or near Camden, NJ, and Wilmington, DE, to points in OH, PA, MI, IN, IL, KY, and WV. (Hearing site: Philadelphia, PA, or Columbus, OH.)

MC 106674 (Sub-476F), filed March 17, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *such commodities* as are dealt in by food business houses (except commodities in bulk, in tank vehicles), (1) from the facilities of Lever Brothers Company, at or near (a) Chicago, IL and (b) Hammond, IN, to Atlanta, GA, Cincinnati, OH, and New Orleans, LA, (2) from the facilities of Lever Brothers Company, at or near St. Louis, MO, to Atlanta, GA, Cincinnati, OH, Nashville, TN, and New Orleans, LA. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 107064 (Sub-144F), filed March 17, 1980. Applicant: STEERE TANK LINES, INC., P.O. Box 220998, Dallas, TX 75222. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. Transporting *sodium sulphate*, in bulk, from points in Lea County, NM, to points in the U.S. (except AK and HI). (Hearing site: Dallas, TX.)

MC 30844 (Sub-683F), filed March 18, 1980. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 21222, Tulsa, OK 74121. Representative: Larry L. Strickler, P.O. Box 5000, Waterloo, IA 50704. Transporting *paper*, from Groveton, NH, to Jefferson City and Kansas City, MO, restricted to traffic originating at the named origin and destined to the named destinations. (Hearing site: Kansas City, MO, or Washington, DC.)

MC 110325 (Sub-144F), filed March 17, 1980. Applicant: TRANSCON LINES, A Corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving points in Boulder County, CO, and Colorado Springs, CO, as off-route points in connection with carrier's otherwise authorized regular-

route operations. (Hearing site: Denver, CO.)

MC 119634 (Sub-47F), filed March 17, 1980. Applicant: DICK IRVIN, INC., Hwy 2 West, P.O. Box F, Shelby, MT 59474. Representative: Joe Gerbase, 100 Transwestern Bldg., Billings, MT 59101. Transporting *cement*, in bags, between points in MT, on the one hand, and, on the other, points in WY and ND. (Hearing site: Billings, or Great Falls, MT.)

MC 119634 (Sub-48F), filed March 17, 1980. Applicant: DICK IRVIN, INC., Hwy 2 West, P.O. Box F, Shelby, MT 59474. Representative: Joe Gerbase, 100 Transwestern Bldg., Billings, MT 59101. Transporting *lime and limestone*, from ports of entry on the international boundary line between the U.S. and Canada to points in UT, OR, WA, ID, MT, ND, and WY. (Hearing site: Billings, or Great Falls, MT.)

MC 119654 (Sub-88F), filed March 17, 1980. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th St., P.O. Box 509, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *malt beverages*, from points in IL, OH, MI, KY, WI, and MO, to points in IN; and (2) *materials, equipment, and supplies* used in the manufacture of malt beverages (except commodities in bulk), in the reverse direction. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 121664 (Sub-119F), filed March 18, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave., South, Birmingham, AL 35233. Transporting *lumber and lumber products*, from Dublin, Gray, Camilla, Richboro, Fitzgerald, and Perry, GA, and Dade City, FL, to points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Atlanta, GA.)

MC 128095 (Sub-40F), filed March 17, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting *cellulose padding*, from Cloquet, MN, to points in MS and TN. (Hearing site: Memphis, TN, or Washington, D.C.)

MC 133095 (Sub-302F), filed March 7, 1980. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Ron Duncan (same address as applicant). Transporting (1) *malt beverages*, from points in Jefferson County, CO, to points in AR; and (2) *materials and supplies* used in and dealt

with by breweries, in the reverse direction. (Hearing site: Dallas, TX.)

MC 135524 (Sub-123F), filed March 17, 1980. Applicant: G. F. TRUCKING COMPANY, a Corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting (1)(a) *plastic pipe*, and *plastic pipe fittings*, and (b) *materials and supplies* used in the manufacture, distribution, and installation of the commodities in (1)(a) above, between Bristol, IN, Leola, PA, and Carrollton, OH, on the one hand, and on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX; (2)(a) *clay products*, (b) *materials* used in the manufacture, distribution, and installation of clay products, between Bowerston, OH, and points in Tuscarawas County, OH, on the one hand, and, on the other those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX; and (3) *iron and steel articles*, between points in Tuscarawas County, OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Columbus, or Cleveland, OH.)

MC 135524 (Sub-124F), filed March 17, 1980. Applicant: G. F. TRUCKING COMPANY, a Corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting (1) *iron and steel articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Madison, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Columbus, OH, or Indianapolis, IN.)

MC 135524 (Sub-125F), filed March 17, 1980. Applicant: G. F. TRUCKING COMPANY, a Corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting (1) *lumber, particleboard, composition board, and wallboard*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between East Camden, AR, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Columbus, OH, or Memphis, TN.)

MC 135705 (Sub-14F), filed March 17, 1980. Applicant: MELROSE TRUCKING CO., INC., 2671 So. Robertson Rd., Casper, WY 82601. Representative: Raymond M. Kelley, 450 Capitol Life

Center, Denver, CO 80203. Transporting *cement*, from points in Pennington County, SD, to points in CO and WY. (Hearing Site: Denver, CO.)

MC 136315 (Sub-117F), filed March 17, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of New Terminal Warehouse, Inc., at Houston, TX, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, restricted to traffic having a prior or subsequent movement by water. (Hearing Site: Houston, TX, or Washington, DC.)

Note.—Dual operations may be involved.

MC 141804 (Sub-392F), filed March 17, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *bags, pouches, food product casings* and (2) *materials* used in the manufacture of the commodities in (1) above, from Danville, IL, to points in the U.S. (except AK, HI, and IL), restricted to traffic originating at or destined to the facilities of Teepak, Inc. (Hearing Site: Los Angeles, CA.)

MC 141804 (Sub-393F), filed March 17, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *general commodities* (except foodstuffs requiring refrigeration, meats, meat products and meat byproducts, dairy products and articles distributed by meat packing houses, as described in Sections A, B, and C of Appendix I to the report in *descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from point in WA and OR to points in the U.S. (except AK and HI), restricted to traffic having a prior movement by water. (Hearing Site: Los Angeles, CA.)

MC 141804 (Sub-394F), filed March 17, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant).

Transporting (1) *motor vehicle parts* and (2) *accessories and supplies* for motor vehicles, from points in CA, to those points in the U.S. west of ND, SD, NE, KS, OK and TX. (Hearing Site: Los Angeles, CA.)

MC 141804 (Sub-395), filed March 17, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *bathroom supplies* and *lavatory supplies and lavatory equipment*, from Evansville, IN, to points in CA. (Hearing site: Los Angeles, CA.)

MC 143594 (Sub-23F), filed March 17, 1980. Applicant: NATIONAL BULK TRANSPORT, INC., 624 Holcomb Bridge Rd., Roswell, GA 30075. Representative: Warren Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Transporting *chemicals*, in bulk, in tank vehicles, (1) from the facilities of Pilot Industries, at or near Houston, TX, to points in LA and OH, (2) from Houston, Freeport, Texas City, and Seadrift, TX, to Geismar, LA, (3) from Houston, TX, to El Dorado, AR, and (4) from Lake Charles and Plaquemine, LA, to Star, MS. (Hearing site: Houston, TX, or New Orleans, LA.)

MC 143594 (Sub-24F), filed March 17, 1980. Applicant: NATIONAL BULK TRANSPORT, INC., 624 Holcomb Bridge Rd., Roswell, GA 30075. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Transporting *chemicals*, in bulk, in tank vehicles, between the facilities of Unisphere Corporation, at or near Spartanburg, SC, on the one hand, and, on the other, points in AL, FL, GA, IL, IA, LA, MA, MI, MS, TN, and TX. (Hearing site: Spartanburg, SC, or Atlanta, GA.)

MC 143594 (Sub-25F), filed March 17, 1980. Applicant: NATIONAL BULK TRANSPORT, INC., 624 Holcomb Bridge Rd., Roswell, GA 30075. Representative: Warren Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. Transporting *resins*, in bulk, in tank vehicles, from Houston, TX, to points in AR, LA, OK, and TX, restricted to traffic having an immediate prior movement by rail. (Hearing site: Atlanta, GA, or Chicago, IL.)

MC 145054 (Sub-34F), filed March 17, 1980. Applicant: COORS TRANSPORTATION COMPANY, A Corporation, 5101 York St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80216. Transporting (1) *canned and preserved foodstuffs*, and (2) *pet food*, from the facilities of the Carnation Company, at Elwood, KS, and

St. Joseph, MO, to points in CO.
(Hearing site: Denver, CO.)

Note.—Dual operations may be involved.

MC 145744 (Sub-4F), filed March 19, 1980. Applicant: C. V. SOHN, INC., 142 Midland, Maryland Heights, MO 63043. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *meats, meat products, meat byproducts*, and articles distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and skins and commodities in bulk), (1) from the facilities of Seitz Foods, Inc., and St. Joseph Terminal Warehouse, Inc., at or near St. Joseph, MO, to points in AL, FL, GA, KY, LA, MS, TN, and TX, and (2) from the facilities of Dubuque Packing Co., at or near Omaha, NE, to points in DE, KS, MD, MO, NC, NJ, NY, OH, PA, SC, VA, and DC. (Hearing site: Kansas City, or St. Louis, MO.)

MC 145875 (Sub-8F), filed March 17, 1980. Applicant: SWAIN AND SONS TRANSPORTS, INC., 208 Poplar Ave., Memphis, TN 38103. Representative: William R. Swain, Jr., (same address as applicant). Transporting *such commodities* as are dealt in or used by grocery houses, between Memphis, TN, on the one hand, and, on the other, points in LA. (Hearing site: Memphis, TN.)

MC 148984 (Sub-2F), filed March 12, 1980. Applicant: AIRWAY MOVING & STORAGE, INC., 3306 Trent Rd., New Bern, NC 28560. Representative: Alan F. Wohlstetter, 1700 K St. NW, Washington, DC 20006. Transporting *used household goods*, between points in Craven, Columbus, Lenoir, Pamlico, Jones, Carteret, Onslow, Duplin, Pender, Brunswick, Wayne, Sampson, Pitt, Greene, Bladen, New Hanover and Beaufort Counties, NC, restricted to shipments having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such shipments. (Hearing site: New Bern, or Wilmington, NC.)

MC 149004 (Sub-5F), filed March 12, 1980. Applicant: WHITE BROS., INC., R.R. #1, Box 566, Oakwood Station, Hannibal, MO 63401. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102. *Contract carrier*, transporting *such commodities* as are dealt in or used by manufacturers of synthetic rubber compounds and rubber products, between Hannibal, MO, on the

one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Huntington Rubber Company, of Hannibal, MO. (Hearing site: Hannibal or St. Louis, MO.)

MC 149164 (Sub-4F), filed March 7, 1980. Applicant: GENE'S, INC., 6975 Brookville-Salem Rd., Brookville, OH 45309. Representative: John L. Alden, 1396 West Fifth Ave., P.O. Box 12241, Columbus, OH 43212. Transporting (1) *oil absorbent*, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodity in (1) above, (except commodities in bulk), between Paris, TN, Olmstead, IL and Bloomfield, MO, on the one hand, and, on the other, Dayton, Columbus, and Middletown, OH, and Butler, PA. (Hearing site: Columbus, OH, or Washington, DC.)

Volume No. 195

Decided: June 5, 1980.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman.

MC 3854 (Sub-58F), filed March 25, 1980. Applicant: BURTON LINES, INC., P.O. Box 11306, East Durham Station, Durham, NC 27703. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St. NW., Washington, DC 20004. Transporting (1) *lumber, composition board, pipe, pipe fittings, and pipe accessories*, and *building materials*, and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities in (1) above (except commodities in bulk), between points in AL, DE, FL, GA, IL, IN, KY, LA, MD, MI, MS, MO, NJ, NC, OH, PA, SC, TN, VA, WV, and DC. (Hearing site: Charlotte, NC.)

MC 4405 (Sub-625F), filed March 20, 1980. Applicant: DEALERS TRANSIT, INC., P.O. Box 236, Tulsa, OK 74101. Representative: Michael E. Miller, 502 First National Bank Bldg., Fargo, ND 58126. Transporting (1) *street sweepers*, (2) *parts and accessories* for street sweepers, and (3) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of TYMCO, Inc., at or near Waco, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Dallas, TX.)

MC 8535 (Sub-116F), filed March 26, 1980. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INC., P.O. Box 500, Parkton, MD 21120. Applicant's Representative: John Guandolo, 1000 Sixteenth Street NW., Washington, DC 20036. Transporting, *aluminum and aluminum articles (except in dump*

vehicles), from the facilities of Aluminum Company of America, Warrick County, IN, to points in MD, ME, NC, NJ, NY, PA and VA. (Hearing site: Evansville, IN, Louisville, KY.)

MC 8535 (Sub-119F), filed March 26, 1980. Applicant: GEORGE TRANSFER AND RIGGING CO., INC., P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth Street NW., Washington, DC 20036. Transporting *iron and steel articles* (except in bulk), from Newport and Wilder, KY, to points in IL, IN, MI, and TN. (Hearing site: Cincinnati, OH, or Washington, DC.)

MC 9914 (Sub-12F), filed March 24, 1980. Applicant: WARREN TRUCKING CO., INC., P.O. Box 5224, Martinsville, VA 24112. Representative: Richard L. Hollow, P.O. Box 550, Knoxville, TN 37901. Transporting (1) *new furniture* (2) *materials, equipment and supplies* used in the manufacture and distribution of new furniture and (3) *furniture parts*, from points in Henry and Smyth Counties, VA, to points in TN and KY. (Hearing site: Roanoke, VA or Greensboro, NC.)

MC 41404 (Sub-166F), filed March 26, 1980. Applicant: ARGO-COLLIER TRUCK LINES CORP., Box 440, Martin, TN 38237. Representative: Mark Horne (same address as applicant). Transporting (1) *such commodities* as are dealt in by food business houses, and (2) *commodities* which are otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6) in mixed loads with the commodities in (1) above, (except commodities in bulk), between points in AL, AR, FL, GA, IA, IN, IL, KY, LA, MI, MO, MS, NC, OH, SC, TN, and WI. (Hearing site: Chicago, IL or St. Louis, MO.)

MC 85934 (Sub-114F), filed March 24, 1980. Applicant: MICHIGAN TRANSPORTATION CO. (a corporation), 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *hardwood flooring and hardwood flooring systems*, from Dollar Bay, MI, to points in AL, AZ, CO, CT, DE, GA, IL, IN, KA, KS, KY, LA, ME, MD, MA, MI, MN, MO, MT, MS, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 85934 (Sub-115F), filed March 24, 1980. Applicant: MICHIGAN TRANSPORTATION CO. (a corporation), 3601 Wyoming, P.O. Box 248, Dearborn, MI 48120. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *powdered coal*, from

Detroit, MI, to points in IL, IN, IA, KA, KS, MN, OH, PA, TN, WV, and WI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 94265 (Sub-345F), filed March 20, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305—Route 460, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 72043, Atlanta, GA 30328. Transporting *foodstuffs* from the facilities used by Seabrook Foods, Inc., at or near Alamo and Brownsville, TX, to the facilities used by Seabrook Foods, Inc., at points in GA. (Hearing site: Dallas, TX, or Washington, DC.)

MC 99284 (Sub-8F), filed March 24, 1980. Applicant: SULLIVAN'S MOTOR DELIVERY, INC., 711 S. First St., Milwaukee, WI 53204. Representative: James R. Madler, 120 W. Madison St. Chicago, IL 60602. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the commission, and commodities in bulk), between Chicago, Waukegan, North Chicago, Lake Bluff, Lake Forest, and Highland Park, IL, on the one hand, and, on the other, Appleton, Cedarburg, DePere, Fond du Lac, Grafton, Green Bay, Kenosha, Manitowoc, Menasha, Milwaukee, Neenah, Oshkosh, Port Washington, Racine, Sheboygan, Two Rivers, and West Bend, WI. (Hearing site: Chicago, IL, or Milwaukee, WI.)

Note.—Applicant holds similar authority in MC 99284 Sub 6, issued December 11, 1978, and modified by decision served January 22, 1980, which is restricted to shipments weighing less than 75 pounds a shipment and not more than 108 inches in circumference. By this application, the applicant seeks to delete the restriction.

Condition.—Issuance of a certificate herein is subject to the prior or coincidental cancellation at applicant's written request, of Certificate No. MC 99284 Sub 6.

MC 105774 (Sub-7F), filed October 1, 1979. Applicant: JOHNSON TRUCK LINE, INC., Jct. U.S. Hwy 281 and U.S. Hwy 24, Osborne, KS 67473. Representative: Erle W. Francis, Suite 719, 700 Kansas Ave., Topeka, KS 66603. Transporting (1)(a) *iron and steel articles*, and (b) *materials* used in the manufacture of agricultural machinery and implements, from points in the U.S. (except AK, DE, HI, ID, ME, NV, OR, and SC), to those points in KS on and bounded by a line beginning at the KS-NE State line, and extending along US Hwy 77 to the KS-OK State line, then along the KS-OK State line to US Hwy 83, then along US Hwy 83 to the KS-NE State line, and then along the KS-NE State line to the point of beginning; (2) *lumber* from the facilities of Boise-Cascade Mills at points in MT, OR, UT, WA and WY, to the facilities of Royal

Industries, Inc., at or near Clay Center and Lincoln, KS; and (3)(a) *agricultural machinery, implements and parts*, from those points in KS on and bounded by a line beginning at the KS-NE State line, and extending along US Hwy 77 to the KS-OK State line, then along the KS-OK State line to US Hwy 83, then along US Hwy 83 to the KS-NE State line, and then along the KSNE State line to the point of beginning, to points in the U.S. (except AK and HI). (Hearing site: Topeka, or Wichita, KS.)

MC 106074 (Sub-150F), filed March 26, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy 221 S, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *frozen foods*, from San Antonio, TX, to points in GA, IL, CO, CA, KS, MO, NJ, and FL. (Hearing site: San Antonio, TX, or Washington, DC.)

Note.—Dual operations may be involved.

MC 107295 (Sub-977F), filed March 21, 1980. Applicant: PRE-FAB TRANSIT CO. (a Corporation), P.O. Box 146, Farmer City, IL 61842. Representative: Todd A. Peterman (same address as above). Transporting *fencing*, from Stephenson and Gladstone, MI, to points in the U.S. (except AK and HI). (Hearing site: Chicago, IL.)

MC 107515 (Sub-1347F), filed March 21, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting (1) *lighting fixtures and equipment* and (2) *parts and accessories* for the commodities in (1) above from the facilities of Metalux, at or near (a) Americus, GA, and (b) Eufaula, AL, to points in the U.S. (except AK and HI) (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 107515 (Sub-1350F), filed March 21, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., N.E., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *materials, equipment, and supplies* used in the manufacture and distribution of (a) *lighting fixtures* and (b) *parts* for lighting fixtures, from points in the U.S. (except AK and HI) to the facilities of Lithonia Lighting, Div. of National Service Industries, Inc., at or near Cochran and Conyers, GA. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 109324 (Sub-50F), filed March 6, 1980. Applicant: GARRISON MOTOR

FREIGHT, INC., P.O. Box 1278, Harrison, AR 72601. Representative: Francis W. McNerny, Suite 502, 1000 16th St., NW, Washington, DC 20036. Over regular routes, transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), (1) between Memphis, TN, and Kansas City, MO; from Memphis over Interstate Hwy 40 to junction Interstate Hwy 55, then over Interstate Hwy 55 to junction U.S. Hwy 63, then over U.S. Hwy 63 to Cabool, MO, then over U.S. Hwy 60 to Springfield, MO, then over MO Hwy 13 to junction MO Hwy 7, then over MO Hwy 7 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Kansas City, and return over the same route, (2) between Fort Smith, AR, and Kansas City, MO, over U.S. Hwy 71, in (1) and (2) above as alternate routes for operating convenience only in connection with carrier's otherwise authorized regular-route operations, serving no intermediate points. (Hearing site: Washington, DC.)

Note.—Applicant intends to tack this authority with its existing authority.

MC 109584 (Sub-212F), filed March 19, 1980. Applicant: ARIZONA-PACIFIC TANK LINES (a corporation), 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same address as applicant). Transporting *fertilizer solutions*, in bulk, in tank vehicles, from Dimmitt, TX, to points in AZ. (Hearing site: Los Angeles, CA.)

MC 109634 (Sub-6F), filed March 24, 1980. Applicant: TRAILER CONVOYS, INC., 2113 Fern Valley Rd., Louisville, KY 40213. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract carrier*, transporting *trailers and trailer chassis* between points in the U.S. (except AK and HI), under continuing contract(s) with Bush Hog-Loadcraft Division of Allied Products Corp., of Brady, TX. (Hearing site: Dallas, TX.)

MC 110325 (Sub-146F), filed March 26, 1980. Applicant: TRANSCON LINES, A Corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Memphis, TN, and Kansas City, MO; from Memphis over Interstate Hwy 55 to junction U.S. Hwy 63, then over

U.S. Hwy 63 to junction U.S. Hwy 60, then over U.S. Hwy 60 to junction MO Hwy 13, then over MO Hwy 13 to junction MO Hwy 7, then over MO Hwy 7 to junction U.S. Hwy 71, then over U.S. Hwy 71 to Kansas City, MO, and return over the same route, as an alternate route for operating convenience only, serving no intermediate points. (Hearing site: Los Angeles, CA.)

Note.—Applicant intends to tack this authority with its existing authority.

MC 112304 (Sub-238F), filed March 24, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representative: John G. Banner (same address as applicant). Transporting (1) *iron and steel articles*, from the facilities of Republic Steel Corporation, at or near Gadsden, AL, to those points in the U.S. in and east of MN, IA, MO, OK, and TX, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), in the reverse direction. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 114914 (Sub-216F), filed March 18, 1980. Applicant: KREIDER TRUCK SERVICE, INC., 8003 Collinsville Rd., E. St. Louis, IL 62201. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting *liquid Orange Juice Concentrate*, in bulk, in tank vehicles, from Chicago, IL, to Bonner Springs, KS. (Hearing Site: St. Louis, MO.)

MC 114914 (Sub-217F), filed March 18, 1980. Applicant: KREIDER TRUCK SERVICE, INC., 8003 Collinsville Rd., E. St. Louis, IL 62201. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting *sugar*, in bulk, from Goodland, KS, to points in MO. (Hearing site: St. Louis, MO.)

MC 115554 (Sub-29F), filed March 24, 1980. Applicant: HEARTLAND EXPRESS, INC. OF IOWA, P.O. Box 89B, R.R. 6, Iowa City, IA 52240. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. (1)(a) Transporting *electric motors, grinders, buffers, dental lathes, dust collectors, and pedestals*, and (b) *parts, accessories, and attachments* for the commodities in (1) above, and (2) *materials, equipment, and supplies*, used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Columbus, MS, and Fort Smith, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Baldor

Electric Company. (Hearing site: Little Rock, AR.)

MC 115654 (Sub-194F), filed March 26, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P. O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton 929 Pennsylvania Bldg., 425 Thirteenth St., N.W., Washington, DC 20004. Transporting *such commodities* as are dealt in or used by grocery and food business houses (except commodities in bulk), between Urbana, OH, Franklin, KY, and Nashville, TN, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, KY, LA, MO, MS, OH, TN, and WV, restricted to traffic originating at or destined to the facilities of The Drackett Company. (Hearing site: Cincinnati, OH.)

MC 115904 (Sub-142F), filed March 19, 1980. Applicant: GROVE TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *insulation products*, from the facilities used by Rockwood Industries, Inc., at or near Pueblo, CO, to points in MT, ID, UT, WY, and NM. (Hearing site: Denver, CO.)

MC 118535 (Sub-147F), filed March 24, 1980. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Jim Tiona Jr., 102 West Ohio, Butler, MO 64730. Transporting *dry fertilizer, dry fertilizer ingredients, and dry ammonium nitrate*, from Fort Madison, IA, to points in IL, KS, MO, NE, and OK. (Hearing site: Kansas City, MO.)

MC 121664 (Sub-118F), filed March 18, 1980. Applicant: HORNADY TRUCK LINE, INC., P. O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave. South, Birmingham, AL 35233. Transporting *poles, piling, and posts*, from Huxford, and Beatrice, AL, and Winnfield, LA, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Birmingham, AL.)

MC 121664 (Sub-120F), filed March 21, 1980. Applicant: HORNADY TRUCK LINE, INC., P. O. Box 846, Monroeville, AL 36460. Representative: W. E. Grant, 1702 First Ave. South, Birmingham, AL 35233. Transporting *materials, equipment, and supplies* used in the manufacture of wood fiber insulation sheeting, hardboard siding, wallboard, particleboard, composition board, and lumber, between the facilities used by Temple Industries at (a) Diboll and Pineland, TX, (b) West Memphis, AR, (c) Thompson GA, and (d) Monroeville, AL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD,

NE, KS, OK, and TX. (Hearing site: Birmingham, AL.)

MC 125335 (Sub-103F), filed March 24, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *foodstuffs*, from Lincolnton, NC, to points in AL, AR, FL, GA, LA, MS, OK, SC, TN, and TX. (Hearing site: Washington, DC or Harrisburg, PA.)

Note.—Dual operations may be involved.

MC 125724 (Sub-4F), filed February 25, 1980. Applicant: SINGER TRANSPORT, INC., S-3030 Baker Rd., Orchard Park, NY 14127. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court St., Buffalo, NY 14202. Contract carrier, transporting (1) *anti-friction devices* and (2) *materials, equipment, and supplies* used in the manufacture, distribution and handling of anti-friction devices, between points in CT, GA, IL, IN, MD, MA, MI, NJ, NY, NC, OH, PA, SC, TN, VA, and WV, under continuing contract(s) with TRW Inc., of Cleveland, OH, and its subsidiaries. (Hearing site: Buffalo, NY.)

MC 127304 (Sub-17F), filed March 25, 1980. Applicant: CLEAR WATER TRUCK COMPANY, INC., 9101 North West St., Valley Center, KS 67148. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Contract carrier, transporting (1) *lubricants, automotive supplies, and hand lubrication equipment*, from the facilities of Lubrication Engineers, Inc., at or near Wichita, KS, to points in the U.S. (except AK, HI, and KS); and (2) *materials, supplies, and equipment* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction, under continuing contract(s) with Lubrication Engineers, Inc., of Fort Worth, TX. (Hearing site: Wichita, KS.)

Note.—Dual operations may be involved.

MC 134134 (Sub-70F), filed March 21, 1980. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman Ave., Omaha, NE 68107. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. Transporting (1) *non-alcoholic beverages*, and (2) *containers* used in the distribution of non-alcoholic beverages, from points in IN, IL, MI, and MO, to the facilities of Popco, Inc., d/b/a Vess Beverage Co., at or near Omaha, NE. (Hearing site: Omaha, NE.)

MC 134645 (Sub-34F), filed March 24, 1980. Applicant: LAKE STATE TRANSPORT, INC., P.O. Box 944, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting (1) *rubber*

tires, rubber tubes, wheels, and rims, and (2) materials, equipment, and supplies used in the distribution and repair of tires (except commodities in bulk), (a) from Kansas City, MO, Memphis, TN, Columbus, OH, Muscatine, IA, Portland, OR, and Chicago, IL, to St. Cloud, MN, and (b) from Finley, OH, to St. Joseph, MN. (Hearing site: St. Paul, MN.)

Note.—Dual operations may be involved.

MC 135895 (Sub-90F), filed March 24, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting: (1) and *paper articles and plastic articles*, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of commodities in (1) above (except commodities in bulk and those requiring special equipment), between the facilities of Lilly Division, Owens-Illinois Corporation, at or near (a) Augusta, GA, (b) Bardonia, NY, (c) Springfield, MO, (d) Holmdel, NJ, and (e) Toledo, OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, and NM. (Hearing site: Louisville, KY, or Washington, DC.)

MC 135895 (Sub-92F), filed March 24, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. Transporting: (1) *liquid cleaning and bleaching materials* and (2) *equipment, materials, and supplies* used in the manufacture, and distribution of commodities described in (1) above (except commodities in bulk and those requiring special equipment), between points in AL, LA, MS, and TN, restricted to traffic originating at or destined to the facilities of National Marketing Associates, Inc., of New Orleans, LA. (Hearing site: New Orleans, LA, or Jackson, MS.)

MC 135895 (Sub-93F), filed March 21, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Harold H. Mitchell, Jr., P.O. Box 1295, Greenville, MS 38701. Transporting (1) *fertilizer and fertilizer ingredients* (except commodities in bulk) and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of Southeastern Chemical, Inc., at or near Jackson, MS, on the one hand, and, on the other, points in AL, AR, LA, TN, and TX. (Hearing site: Jackson, MS.)

MC 136315 (Sub-119F), filed March 24, 1980. Applicant: OLEN BURRAGE

TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting *metal articles* between those points in the US in and east of ND, SD, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities used by Emerson Electric Co., and its subsidiaries. (Hearing site: St. Louis, MO, or Washington, DC.)

Note.—Dual operations may be involved.

MC 136315 (Sub-120F), filed March 20, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting (1) (a) *electrical appliances*, (b) *equipment and parts* for electrical appliances, (c) *pole line hardware* and (d) *attachments* for pole line hardware, from the facilities of A. B. Chance Company, at or near Centralia and Washington, MO, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX; and (2) *materials, supplies, and equipment* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction, restricted to traffic originating at or destined to the facilities used by A. B. Chance Company. (Hearing site: St. Louis, MO, or Washington, DC.)

Note.—Dual operations may be involved.

MC 136315 (Sub-121F), filed March 21, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. Transporting (1) (a) *wallboard* and (b) *accessories* used in the installation of wallboard, from the facilities of Temple Industries, Inc., at or near West Memphis, AR, to points in OH; (2) (a) *insulation materials*, and (b) *accessories* used in the installation of the commodities in (2) (a) above, from the facilities of Temple Industries, Inc., at or near West Memphis, AR, to points in AL, FL, GA, IL, IN, KY, LA, MS, MO, OH, OK, TN, and TX. (Hearing site: Memphis, TN, or Washington, DC.)

Note.—Dual operations may be involved.

MC 138575 (Sub-12F), filed March 25, 1980. Applicant: GWINNER OIL CO., INC., P.O. Box 38, Gwinner, ND 58040. Representative: James B. Hovland, Suite M-20, 400 Marquette Ave., Minneapolis, MN 55402. *Contract carrier*, transporting (1) (a) *agricultural, industrial, and construction machinery*, and (b) *parts and sub-assemblies* for the commodities in (1) (a) above, from the facilities of Clark Equipment Company, Melroe Division, at or near (a) Spokane, WA, and (b) Bismarck, ND, to points in the U.S. (except AK and HI); and (2)

materials and supplies used in the manufacture of the commodities named in (1) above, in the reverse direction, under continuing contract(s) with Clark Equipment Co., of Gwinner, ND. (Hearing site: Bismarck, ND, or Minneapolis, MN.)

MC 138875 (Sub-278F), filed March 24, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, A Corporation, 11900 Franklin Rd., Boise, ID 83709. Representative: F. L. Sigloh (same address as applicant). Transporting *twine*, from points in KS, to points in CA, ID, MT, NV, OR, UT, WA, and WY. (Hearing site: Boise, ID, or Washington, DC.)

MC 140265 (Sub-14F), filed March 24, 1980. Applicant: Larry E. Hickox, d.b.a. LARRY E. HICKOX TRUCKING, Box 95, Casey, IL 62420. Representative: Robert T. Lawley, 300 Reich Bldg., Springfield, IL 62701. *Contract carrier*, transporting *such commodities as are dealt in or used by grocery and food business houses*, from Urbana, OH, to Los Angeles, CA, Denver, CO, and Dallas and Lubbock, TX, under continuing contract(s) with The Drackett Company, of Cincinnati, OH. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 141084 (Sub-18F), filed March 20, 1980. Applicant: NATIONAL FREIGHT LINES, INC., 13023 Arroyo, P.O. Box 1031, San Fernando, CA 91341. Representative: Bill D. Gardner (same address as applicant). *Contract carrier*, transporting *such commodities as are dealt in or used by manufacturers of chemicals and plastics*, from the facilities of Dow Chemical, USA, in LA, to points in CA, under continuing contract(s) with Dow Chemical, USA, Louisiana Division. (Hearing site: Baton Rouge, LA, or Los Angeles, CA.)

MC 141804 (Sub-396F), filed March 24, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *such commodities as are dealt in or used by manufacturers and distributors of household electrical appliances*, between the facilities of Hamilton Beach, at (a) Washington, Clinton, and Farmville, NC, and (b) Byesville, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-397F), filed March 24, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant).

Transporting *ladders* from the facilities of Davidson Mfg. Corp., at or near Nashville, TN, to points in the U.S. (except AK, HI, and TN). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-398F), filed March 26, 1980. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant).

Transporting (1) *hand tools, display racks and tool boxes*, from Dallas, TX, to points in the U.S. (except AK, HI, and TX) and (2) *hand tool forgings and tool boxes*, from Emporia and Easton, PA, and Mineola and Smithtown, NY, to Dallas, TX, restricted in (1) and (2) to traffic originating at or destined to the facilities of Thorsen Tool, Wallace Murray Corporation. (Hearing site: Los Angeles, CA.)

MC 143255 (Sub-3F), filed March 24, 1980. Applicant: R & D TRANSPORTATION CORPORATION, P.O. Box 1908, Des Moines, IA 50306. Representative: Donald B. Strater, 1350 Financial Center, Des Moines, IA 50306. *Contract carrier*, transporting *animal feeds*, from the facilities of Triple "F", Inc., at or near (a) Des Moines and Westside, IA, and (b) Ralston, NE, to points in CA, MT, UT, ID, WA, OR, WY, under continuing contract(s) with Triple "F", Inc., of Des Moines, IA. (Hearing site: Omaha, NE, or Kansas City, MO.)

MC 144144 (Sub-5F), filed March 24, 1980. Applicant: RAINS TRUCKING SERVICE, INC., P.O. Box 73, DuQuoin, IL 62632. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract carrier*, transporting *gas grills, playground equipment, revolving chairs, gymnasium apparatus, scooters, and children's table sets*, from the facilities of Turco Manufacturing Corporation, at or near DuQuoin, Murphysboro, and Herrin, IL, to Findlay and Akron, OH, under continuing contract(s) with Turco Manufacturing Corporation, of DuQuoin, IL. (Hearing site: Chicago, IL.)

MC 144985 (Sub-2F), filed March 20, 1980. Applicant: THE HOLLAND COMPANY, INC., 319 Clark St., Cayce, SC 29033. Representative: Eric Meierhoefer, Suite 423, 1511 K St. NW., Washington, DC 20005. Transporting *glazed structural masonry products*, from Mt. Holly, SC, to points in AR, LA, VA, PA, MD, DE, NJ, NY, OH, VT, NH, MA, ME, CT, RI, WV, and DC. (Hearing site: Columbia, SC.)

MC 145664 (Sub-17F), filed March 17, 1980. Applicant: STALBERGER TRUCKING, INC., 223 South 50th Ave. West, Duluth, MN 55806. Representative: Robert L. Kalenda, 921 First St. North,

St. Cloud, MN 56301. Transporting (1) *used railroad parts*, and (2) *scrap metal*, from Duluth, MN, to points in MN and IL. (Hearing site: Duluth, or Minneapolis, MN.)

MC 146964 (Sub-10F), filed March 24, 1980. Applicant: RELIABLE TRUCK LINES, INC., 1451 Spahn Ave., York, PA 17403. Representative: Christian V. Graf, 407 North Front St., Harrisburg, PA 17101. Transporting *paper and paper products*, from the facilities of Central States Diversified, Inc., at Palatka, FL, to points in AL, CT, DE, MA, MD, MO, NJ, NY, OH, PA, TN, VA, and DC, restricted to traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC or Harrisburg, PA.)

MC 147394 (Sub-9F), filed March 25, 1980. Applicant: COASTAL REFRIGERATED SERVICE INC., 34 Market St., Room No. 30, Everett, MA 02149. Representative: Robert N. Hayford (same address as applicant). *Contract carrier*, transporting (1) *lighting products*, and (2) *materials, equipment, and supplies* used in the manufacture of lighting products, between Wilmington, MA, on the one hand, and, on the other, points in the U.S. (excluding AK and HI), under continuing contract(s) with Keene Corporation, Lighting Division, of Wilmington, MA. (Hearing site: Boston, MA.)

MC 147474 (Sub-5F), filed March 20, 1980. Applicant: SOUTHWIRE COMPANY, a Corporation, 126 Fertilla St., Carrollton, GA 30117. Representative: Theodore M. Forbes, Jr., 4000 First National Bank Tower, Atlanta, GA 30303. Transporting *plastic resin* (except in bulk, in tank vehicles), from Houston and Baytown, TX, to the facilities of Sun Products Corporation, at Carrollton, GA. Conditions: (1) The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary. (2) Carrier shall conduct its for-hire carrier activities and its other business activities independently, and shall maintain separate records for each. (Hearing site: Atlanta, GA.)

MC 148035 (Sub-5F), filed March 26, 1980. Applicant: QUANDT TRANSPORT SERVICE, INC., 2606 North 11th St., Omaha, NE 68110. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *fertilizer and fertilizer solutions*, from Falls City, Glair, and LaPlatte, NE, to Westboro, MO, and Shenandoah, IA.

(Hearing site: Kansas City, MO, or Omaha, NE.)

MC 148434 (Sub-1F), filed December 15, 1979. Applicant: SECURITY INCORPORATED, 711 Franklin Sq., Michigan City, IN 46360. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *commercial, bank, and business documents*, between Chicago, IL and points in IN and MI. (Hearing site: Indianapolis, IN or Chicago, IL.)

Note.—Dual operations may be involved.

MC 149304 (Sub-2F), filed March 20, 1980. Applicant: J H R CORPORATION, 105 East Kiowa, Suite 200, Colorado Springs CO, 80903. Representative: Edward T. Lyons, Jr., 1600 Lincoln Center Bldg., 1660 Lincoln St., Denver, CO 80264. *Contract carrier*, transporting *coal*, from the facilities of Chimney Rock Coal, in Archuleta County, CO, to South Fork, CO, those points in NM on and north of U.S. Hwy 60, those in AZ on, north, and east of a line beginning at the AZ-NM State line and extending along U.S. Hwy 60 to junction AZ Hwy 77, then along AZ Hwy 77 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction U.S. Hwy 89, at or near Flagstaff, AZ, then along U.S. Hwy 89 to the AZ-UT State line, and those in Grand and San Juan Counties, UT, under continuing contract(s) with Chimney Rock Coal, of Pagosa Springs, CO. (Hearing site: Denver CO.)

MC 149375 (Sub-1F), filed March 25, 1980. Applicant: F. W. NEWCOMB, SR., and F. W. NEWCOMB, JR. d.b.a. F. W. NEWCOMB TRUCKING, 2716 Isette Ave., Muscatine, IA 52761. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting (1) *lighting fixtures*, and (2) *materials and supplies* used in the manufacture and distribution of lighting fixtures (except commodities in bulk), between the facilities of Muscatine Lighting Mfg., at Muscatine, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 150015 (Sub-1F), filed April 3, 1980. Applicant: BENETO, INC., 1700 South River Rd., W. Sacramento, CA 95691. Representative: Jonathan M. Lindeke, 100 Bush St., Ste. 428, San Francisco, CA 94104. *Contract carrier*, transporting *Petroleum oil* (except in bulk, in tank vehicles), from Richmond, CA, to points in Washoe, Douglas, Lyon, and Storey Counties, NV, under continuing contract(s) with Witco Chemical Corp. of Los Angeles, CA. (Hearing site: San Francisco, CA, or Sacramento, CA.)

MC 150245 (Sub-1F), filed March 24, 1980. Applicant: BROWN'S SALVAGE, INC., Rt. 2, Box 157, Tupelo, MS 38801. Representative: Fred W. Johnson, Jr., 236 East Capitol St., P.O. Box 22807, Jackson, MS 39205. Transporting: *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Columbus, Tupelo, and West Point, MS, on the one hand, and, on the other, points in Calhoun, Chickasaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Prentiss, Pontotoc, Tippah, Union, and Winston Counties, MS, and Marion County, AL, restricted to traffic having a prior or subsequent movement by rail. (Hearing site: Tupelo, MS or Washington, DC.)

MC 150404F, filed March 20, 1980. Applicant: ROBERT POWELL, R.R. #1, Chrisman, IL 61924. Representative: Edward D. McNamara, Jr., 907 South Fourth St., Springfield, IL 62703. Transporting *liquid fertilizer and anhydrous ammonia*, from Crawfordsville and Terre Haute, IN, to points in IL. (Hearing site: Springfield, IL, or St. Louis, MO.)

MC 150374 (Sub-1F), filed March 25, 1980. Applicant: AVON DISPATCH, INC., 240 Ash St., Reading, MA 01867. Representative: Joseph T. Bambrick, Jr., P.O. Box 2087, Sebastian, FL 32958. Transporting (1) *uncrated office equipment*, and (2) *materials, supplies, and equipment* used in the manufacture, installation, and distribution of the commodities in (1) above, between points in CT, ME, MA, NH, RI and VT. (Hearing site: Boston, MA.)

MC 150395F, filed March 24, 1980. Applicant: JACKIE B. LOVETT TRUCKING CO., INC., Route 2, Waynesboro, GA 30830. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Transporting *lumber, forest products, wood residuals, and wood fuel*, from the facilities of the Forest Products Division, Kimerly-Clark Corporation, at or near Waynesboro, GA, to points in NC, SC, and TN. (Hearing site: Augusta or Atlanta, GA.)

MC 150724F, filed December 10, 1979, previously noticed in the **Federal Register** issue of March 27, 1980 as MC 143218 (Sub-7F). Applicant: DONALD SANTISI TRUCKING COMPANY, a Corporation, 1024 North Main St., Niles, OH 44446. Representative: Paul F. Berry, 275 East State St., Columbus, OH 43215.

Note.—This republication corrects the docket number which is MC 150724F.

Passenger

MC 2835 (Sub-44F), filed March 19, 1980. Applicant: ADIRONDACK TRANSIT LINES, INC., 18 Pine Grove Ave., P.O. Box 1758, Kingston, NY 12401. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW, Washington, DC 20004. Over regular routes, transporting *passengers and their baggage*, and *express and newspapers*, in the same vehicle with passengers, between junction Interstate Hwy 287 and Interstate Hwy 87 near Suffern, NY, and Freeport, NY: from junction Interstate Hwy 287 and Interstate Hwy 87 over Interstate Hwy 87 to junction NY Hwy 119, then over NY Hwy 119 to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 295, then over Interstate Hwy 295 to NY Hwy 25, then over NY Hwy 25 to NY Hwy 25B, then over NY Hwy 25B to Mineola, NY, then over Mineola Blvd. and Franklin Ave. to Hempstead, NY, then over Henry St., Greenwich St., Nassau Rd., and Main St., to Freeport, NY, and return over the same route, serving all intermediate points. (Hearing site: White Plains, or New York, NY.)

Note.—Applicant intends to tack this authority with its existing authority.

MC 70384 (Sub-3F), filed March 26, 1980. Applicant: SHOUP BUSES, INC., P.O. Box 271, Middlebury, IN 46540. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning or ending at points in Williams, Fulton, Lucas, Wood, Henry, Defiance, Paulding, Putnam, Hancock, Allen, VanWert, Mercer, and Auglaize Counties, OH, points in Berrien, Cass, St. Joseph, Branch, Hillsdale, Leuwer, Monroe, Jackson, Calhoun, Kalamazoo and VanBuren Counties, MI, and points in IN and extending to points in the U.S. (including AK, but excluding HI). (Hearing site: South Bend, or Ft. Wayne, IN.)

MC 150365F, filed March 20, 1980. Applicant: UNITED LIMO, INC., 12495 McKinley Hwy, Mishawaka, IN 46544. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., Indianapolis, IN 46204. Transporting *passengers and their baggage*, in the same vehicle with passengers in special or charter operations, between South Bend, Mishawaka, and Elkhart, IN, on the one hand, and, on the other, the O'Hare International Airport, at or near Chicago, IL. (Hearing site: Chicago, IL.)

Volume No. 197

Decided: May 30, 1980.

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen.

MC 2368 (Sub-103F), filed March 17, 1980. Applicant: BRALLEY-WILLETT TANK LINES, INC., 2212 Deepwater Terminal Rd., P. O. Box 495, Richmond, VA 23204. Representative: Steven L. Weiman, 4 Professional Drive, Gaithersburg, MD 20760. Transporting *chemicals*, in bulk, from Catlettsburg, KY, and Kingsport, TN, to points in VA. (Hearing site: Washington, DC.)

MC 23618 (Sub-64F), filed March 10, 1980. Applicant: McALISTER TRUCKING COMPANY, d.b.a. MATCO, a Corporation, 2041 Treadaway Blvd., Abilene, TX 79604. Representative: E. Larry Wells, P. O. Box 45538, Dallas, TX 75245. Transporting (1) *machinery, equipment, materials and supplies* used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products; (2) *machinery, equipment, materials, and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; (3) *earth drilling machinery and equipment*; (4) *equipment, materials and supplies* used in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at wells or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in KS, LA, NM, OK, and TX, on the one hand, and, on the other, points in OH, PA, and WV. (Hearing site: Dallas, TX, or Tulsa, OK.)

Note.—If a certificate is issued, tracking will be authorized (A) at points in KS, LA, NM, OK, and TX, with carrier's authority in MC-23618, issued March 16, 1964, to provide a through service transporting the commodities described in (1) and (2) above, between points in OH, PA, and WV, on the one hand, and, on the other, points in AZ, CO, UT, and WY, and (B) at points in TX with carrier's authority in MC 23618, issued March 16, 1964, to provide a through service transporting the commodities described in (1) and (2) above, between points in OH, PA, and WV, on the one hand, and, on the other, points in MT.

MC 23618 (Sub-65F), filed March 11, 1980. Applicant: McALISTER TRUCKING COMPANY, d.b.a. MATCO,

a corporation, 2041 Treadaway Blvd., Abilene, TX 79604. Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245. Transporting (1) *machinery, equipment, materials and supplies* used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products; (2) *machinery, equipment materials and supplies* used in or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof; (3) *earth drilling machinery and equipment*; (4) *equipment, materials and supplies* used in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling or drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at wells or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in KS, LA, NM, OK, and TX, on the one hand, and, on the other, points in AL, AR, FL, GA, MS, and TN. (Hearing site: Dallas, TX, or Tulsa, OK.)

Note.—Tacking is authorized (A) at points in KS, LA, NM, OK, and TX, with carrier's authority in MC 23618, issued March 16, 1964, to provide a through service transporting the commodities described in (1) and (2) above, between points in AL, AR, FL, GA, MS and TN, on the one hand, and, on the other points in AZ, CO, UT, and WY, and (B) at points in TX with carrier's authority in MC 23618, issued March 16, 1964, to provide a through service transporting the commodities described in (1) and (2) above, between points in AL, AR, FL, GA, MS, and TN, on the one hand, and, on the other points in MT.

MC 42289 (Sub-14F), December 10, 1980. Applicant: LOMBARD BROS., INC., 233 Mill Street, Waterbury, CT 06720. Representative: Hugh M. Joseloff, 80 State Street, Hartford, CT 06103. Transporting *general commodities* (except those of unusual value classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Columbia, Montour, and Northumberland Counties, PA, south of the Susquehanna River, and those in Schuylkill, Dauphin, Lebanon, Montgomery, Lehigh, Berks, and Lancaster Counties, PA, on the one hand, and, on the other, points in MD and DC on U.S. Hwy 1 between and including Elkton, MD, and Washington, DC. (Hearing site: Hartford, CT, or Washington, DC.)

Note.—Applicant states a purpose of this application is to eliminate a gateway at Philadelphia, PA.

MC 47898 (Sub-8F), filed March 6, 1980. Applicant: WISCONSIN PACIFIC EXPRESS, INC., P.O. Box 190, Weyauwega, WI 54983. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Transporting *cheese and material and supplies* used in the manufacture and distribution of cheese (except commodities in bulk), between points in MN, on the one hand, and, on the other, points in WI. (Hearing site: St. Paul, MN.)

MC 52709 (Sub-388F), filed March 19, 1980. Applicant: RINGSBY TRUCK LINES, INC., 3980 Quebec St., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same as applicant). Transporting *foodstuffs* (except in bulk), from Tacoma, WA, to Mt. Summit, IN. (Hearing site: Tacoma, WA or Denver, CO.)

MC 55709 (Sub-16F), filed March 18, 1980. Applicant: ANDING TRANSIT, INC., P.O. Box 112, Helena Rd., Arena, WI 53503. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Rd., Madison, WI 53719. Transporting *foodstuffs* (except in bulk), between Arena, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of M & L Cold Storage, Inc. (Hearing site: Madison or Milwaukee, WI.)

MC 78228 (Sub-158F), filed February 21, 1980. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. Transporting (1) *zinc, zinc scrap, and zinc residue*, and (2) *containers* for the commodities in (1) above, between East Liverpool, OH, and Braddock, PA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 78228 (Sub-159F), filed February 28, 1980. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting *scrap metals*, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by Steelmet, Inc. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 78228 (Sub-160F), filed March 6, 1980. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting *scrap metals*,

between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by Pittsburgh Alloys, Inc. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 78228 (Sub-161F), filed March 13, 1980. Applicant: J MILLER EXPRESS, INC., 962 Greentree Rd., Pittsburgh, PA 15220. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *iron and steel articles, gaskets, and caulking and glazing compounds*, (except commodities in bulk), from West Mifflin, PA, to points in AZ, CA, CO, GA, OR, TX, and WA. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 78228 (Sub-182F), filed March 12, 1980. Applicant: J MILLER EXPRESS, INC., 962 Greentree Rd., Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *scrap metals*, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to facilities used by Vac. Air Alloys Corporation. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 88368 (Sub-45F), filed March 11, 1980. Applicant: CARTWRIGHT VAN LINES, INC., 11901 Cartwright Ave., Grandview, MO 64030. Representative: Thomas R. Kingsley, 10614 Amherst Ave., Silver Spring, MD 20902. Transporting (1) *appliances*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Speed Queen Company. (Hearing site: Kansas City, MO, or Washington, DC.)

MC 96719 (Sub-11F), filed March 17, 1980. Applicant: THRASHER TRUCKING COMPANY, a corporation, P.O. Box 116, Monahans, TX 79756. Representative: James W. Hightower, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting (1) *pipe, and iron and steel articles* (except pipe), from the facilities of Fort Worth Pipe & Supply Co., at or near Conroe, TX, to points in the U.S. (including AK, but excluding HI); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction, restricted in (1) and (2) to the traffic originating at or destined to the named facilities. (Hearing site: Dallas or Houston, TX.)

MC 96949 (Sub-3F), filed February 26, 1980. Applicant: POST ROAD STAGES, INC., 1105 Strong Rd., South Windsor, CT 06074. Representative: Barbara D.

Cicala, Room 800—South, 1800 M St. NW., Washington, DC 20036.

Transporting *passengers and their baggage*, in the same vehicle with passengers, (1) in special operations, in round-trip tours, beginning and ending at points in Hartford and Tolland Counties, CT, and those in Hampden County, MA, east of the town boundaries of Hampden, Wilbraham, and Ludlow, MA, and extending to points in the U.S. (including AK, but excluding HI); (2) in special operations, in one-way tours, from points in Hartford and Tolland Counties, CT, and those in Hampden County, MA, east of the town boundaries of Hampden, Wilbraham, and Ludlow, MA, to points in the U.S., (including AK, but excluding HI), and (3) in special operations, in one-way tours, from points in the U.S. (including AK, but excluding HI), to points in Hartford and Tolland Counties, CT, and those in Hampden County, MA, east of the town boundaries of Hampden, Wilbraham, and Ludlow, MA. (Hearing site: Hartford, CT.)

Note.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 USC 11343 or submit an affidavit indicating why such approval is unnecessary.

MC 98748 (Sub-5F), filed October 11, 1980. Applicant: DUNMYRE MOTOR EXPRESS, INC., P.O. Box 289, Chicora, PA 16025. Representative: Kent S. Pope, 10 Grant Street, Clarion, PA 16214. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Chicora, East Brady, Eau Clair, Karns City, and Petrolia, PA, on the one hand, and, on the other, points in OH, WV, VA, DE, MD, NJ, PA, and DC. (Hearing site: Pittsburgh, PA.)

MC 99938 (Sub-9F), filed February 28, 1980. Applicant: VAN'S AUTO & AIR EXPRESS, INC., C.P.O. Box 609, Kingston, NY 12401. Representative: Bruce J. Robbins, 118-21 Queens Boulevard, Forest Hills, NY 11375. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Emery Air Freight Corp. at or near (a) Stewart Airport, Newburgh, NY, and, (b) Rye, NY, on the one hand, and, on the other, the facilities of Emery Air Freight Corp., at or near Stratford, CT, restricted to traffic having a prior or subsequent movement by air. Condition: Issuance of a certificate in this

proceeding is conditioned upon either (a) the prior cancellation, at applicant's written request, of Certificates of Registrations in No. MC 99938 (Sub-No. 1, 2, and 3), or (b) the successful conversion of those Certificates of Registration to certificates of public convenience and necessity. (Hearing site: New York, NY.)

MC 106509 (Sub-25F), filed March 17, 1980. Applicant: YOUNGER TRANSPORTATION, INC., 4904 Griggs Road, P.O. Box 14066, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). Transporting *iron and steel articles*, between the facilities of Muskogee Iron Works, at or near Muskogee, OK, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Tulsa, OK.)

MC 107818 (Sub-106F), filed March 11, 1980. Applicant: GREENSTEIN TRUCKING COMPANY, a corporation, 280 Northwest 12th Avenue, Pompano Beach, FL 33061. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Economics Laboratory, Inc., at (a) Avenel, NJ, and (b) Joliet, IL, to points in SC, NC, GA, and FL. (Hearing site: St. Paul, MN.)

MC 108119 (Sub-247F), filed March 10, 1980. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: James L. Nelson, 1241 Pierce Butler Route, St. Paul, MN 55104. Transporting *automatic material handling systems*, from the facilities of Von Gal Operations Division, UHS Division, Litton Industries, Inc., at or near Montgomery, AL, to points in the U.S. (except AK and HI), restricted to traffic originating at the named facilities. (Hearing site: Birmingham, AL or Atlanta, GA.)

MC 108589 (Sub-30F), filed March 7, 1980. Applicant: EAGLE EXPRESS CO., a corporation, 11425 Williamson Road, Cincinnati, OH 45241. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Russell Springs, KY, and Nashville, TN; From Russell Springs over Cumberland Parkway to junction

Interstate Hwy 65, then over Interstate Hwy 65 to Nashville, and return over the same route, serving intermediate points in Barren, Allen, Warren and Simpson Counties, KY, and Davidson County, TN, and all other points in the named counties as off-route points, and serving Fairview, TN, as an off-route point. (Hearing site: Lexington, KY.)

Note.—Applicant intends to tack this authority with its existing authorities.

MC 109818 (Sub-62F), filed August 22, 1979, previously noticed in the *Federal Register* issue of February 20, 1980. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Transporting (1) *irrigation systems*, (2) *parts* for irrigation systems, (3) *solar energy systems, fuel burning heating appliances, and parts and accessories* used in the installation, operation and maintenance of such systems or appliances, (4) *pipe tubing, poles, and materials, equipment and supplies* used in the installation and maintenance of pipe tubing and poles, (5) *iron and steel articles*, (6) *materials, equipment, and supplies* used in the manufacture or assembly of the commodities in (1) through (5) above, and (7) *used irrigation systems and parts* for used irrigation systems, between the facilities of Valmont Industries, Inc., at or near Valley, NE, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Omaha, NE.)

Note.—This republication changes the commodity description and broadens the territorial description.

MC 110288 (Sub-16F), filed March 10, 1980. Applicant: HARRY HENERY, INC., 3517 West Washington Street, Indianapolis, IN 46241. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *reinforced earth structures*, (2) *parts and accessories* for the commodities in (1) above and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between Denver, CO, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Indianapolis, IN or Washington, DC.)

MC 110988 (Sub-419F), filed March 17, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 West College Avenue, Appleton, WI 54911. Representative: Matthew J. Reid, Jr., P.O. Box 2298, Green Bay, WI 54306. Transporting *animal fats*, in bulk, from the facilities of Lauridsen Foods, Inc., at or near Britt, IA, to points in IL, IN, IA, KS, KY, MI,

MO, MN, NE, ND, SD, and WI. (Hearing site: Phoenix, AZ, or Chicago, IL.)

MC 111289 (Sub-11F), filed June 22, 1979, previously noticed in **Federal Register** issue of March 27, 1980. Applicant: RICHARD D. FOLTZ, P.O. Box 161, Orwigsburg, PA 17961. Representative: S. Berne Smith, P.O. Box 1166, 100 Pine Street, Harrisburg, PA 17108. To operate as a *contract carrier*, transporting *foodstuffs*, in vehicles equipped with mechanical refrigeration, (except commodities in bulk), (1) from the facilities of Y & S Candies, Inc., and Hershey Foods Corporation, in East Hempfield Township Lancaster County, PA, to Baltimore, MD, Louisville, KY, points in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, NJ, those in Montgomery and Howard Counties, MD, on and east of MD Hwy 97, those in Prince Georges and Anne Arundel Counties, MD, on, north, and west of a line beginning at the DC-MD State line and extending over MD Hwy 4 to junction MD Hwy 3, then over MD Hwy 3 to the Anne Arundel Country-Baltimore City line, those in NY on and west of Interstate Hwy 87, and those in OH south and west of a line beginning at the OH-IN State line and extending along Interstate Hwy 70 to junction U.S. Hwy 68, then along U.S. Hwy 68 to the OH-KY State line, and (2) from the facilities of San Giorgio Macaroni, Inc., at (a) Louisville, KY, and (b) Auburn, NY, to the facilities of Dauphin Distribution Services Co., in Hampden Township, Cumberland County, PA, under continuing contract(s) in (1) and (2) above with Hershey Foods Corporation, of Hershey, PA, San Giorgio Macaroni, Inc., of Lebanon, PA and Y & S Candies, Inc., of Lancaster, PA. (Hearing site: Washington, DC, or Harrisburg, PA.)

Note.—This republication changes the points in Montgomery and Howard Counties, MD, in (1) above from those on and west of MD Hwy 97 to those on and east of MD Hwy 97.

MC 113528 (Sub-54F), filed March 5, 1980. Applicant: MERCURY FREIGHT LINES, INC., P.O. Box 1247, Mobile, AL 36601. Representative: John C. Bradley, suite 1301, 1600 Wilson Boulevard, Arlington, VA 22201. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between junction Interstate Hwy 20 and Interstate Hwy 45, and at or near Dallas, TX, and junction Interstate Hwy 45 and U.S. Hwy 90, at or near Houston, TX,

over Interstate Hwy 45, serving as intermediate points as an alternate route for operating convenience only. (Hearing site: Mobile, AL, or Atlanta, GA.)

MC 113658 (Sub-32F), filed February 5, 1980. Applicant: SCOTT TRUCK LINE, INC., 5280 Newport Street, Commerce City, CO 80216. Representative: Richard J. Loose (same address as applicant). Transporting *chemicals*, *animal feed supplements*, *drugs*, *beet sugar*, *cane sugar*, and *toilet preparations* (except commodities in bulk), from Nutley, Belvidere, and Branchburg, NJ, TO Chicago, IL, Dallas, TX, Atlanta, GA, and San Leandro, Bell, and Fresno, CA. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is unnecessary. (Hearing site: New York, NY, or Denver, CO.)

Note.—Dual operations may be involved.

MC 114569 (Sub-370F), filed March 17, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA. Representative: N. L. Cummins (same address as applicant). Transporting *meats*, *meat products* and *meat by-products*, and *articles distributed by meat-packing houses* (except animal feed, animal feed ingredients, and commodities in bulk), from Crete, Lincoln, and Omaha, NE, and Cherokee, Des Moines, Ft. Dodge, Sioux City, Denison, Carroll, and Iowa Falls, IA, to points in the U.S. (except AK and HI), restricted to traffic originating at the named origins. (Hearing site: Omaha, NE, or Washington, DC.)

Note.—Dual operations may be involved.

MC 114569 (Sub-371F), filed March 19, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA. Representative: N. L. Cummins (same address as applicant). Transporting *foodstuffs* (except in bulk, in tank vehicles) from the facilities of Peter Paul Cadbury, Inc., at or near Salinas, CA, to points in OR, WA, IN, PA, CT, IL, MO, KS, TX, CO, and TN restricted to traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Hartford, CT or Washington, DC.)

MC 119118 (Sub-65F), filed March 14, 1980. Applicant: McCURDY TRUCKING, INC., P. O. Box 388, Latrobe, PA 15650. Representative: Richard C. McGinnis, 711 Washington Building, Washington, DC 20005. Transporting (1) *malt beverages*, from Latrobe, PA, to points in FL, NJ, ME, and MI; and (2) *malt beverage containers*, and *materials and supplies* used in the manufacture and sale of malt beverages (except

commodities in bulk), in the reverse direction. (Hearing site: Pittsburgh, PA.)

MC 119789 (Sub-685F), filed March 17, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). Transporting *chemicals* and *petroleum products*, in containers, from Dallas, TX, to points in the U.S. (except AK and HI). (Hearing site: Dallas, TX.)

MC 119988 (Sub-242F), March 17, 1980. Applicant: GREAT WESTERN TRUCKING, CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245. Transporting *wine*, *spirits*, and *mixes*, from points in CA, to points in TX, OK, KS, NE, IA, MN, AL, AR, CT, DE, NC, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, MO, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VT, WV, WI, VA, and DC. (Hearing site: San Francisco, CA or Dallas, TX.)

MC 120279 (Sub-11F), filed December 17, 1979, previously noticed in **Federal Register** issue of April 1, 1980. Applicant: McFARLAND & HULLINGER, a partnership, 915 North Main Street, Tooele, UT 84074. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Transporting (1) *salt*, in bulk, from the facilities of Texas Gulf, Inc., at Potash, UT, to points in AZ, CO, and NM. (Hearing site: Washington, DC.)

Note.—This republication adds NM to the destination territory.

MC 120978 (Sub-30F), filed March 20, 1980. Applicant: REINHART MAYER, d.b.a., MAYER TRUCK LINE, 1203 South Riverside Drive, Jamestown, ND 58401. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting *dry feed* and *dry feed ingredients*, from Dawson, Mankato, and Minneapolis, MN, Omaha and Weeping Water, NE, and Sioux City, IA, to points in MT and ND. (Hearing site: Fargo, ND, or Minneapolis or St. Paul, MN.)

MC 121568 (Sub-27F), filed March 3, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Avenue, Nashville, TN 37211. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Transporting (1) *bagging materials* and *supplies*, and (2) *equipment*, *materials*, and *supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Werthan Industries, Inc., at or near Nashville, TN, on the one hand, and, on the other, points in AR, LA, MS, OK, and TX. Condition: Issuance of a certificate of public convenience and necessity in this proceeding is subject to

the successful conversion of applicant's certificates of registration to a certificate of public convenience and necessity, in No. MC-121568 Sub 18F. (Hearing site: Nashville, TN.)

MC 121568 (Sub-28F), filed March 3, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Avenue, Nashville, TN 37211. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Over regular routes, transporting *general commodities*, (except classes A and B explosives, household goods as defined by the commission, commodities in bulk, and those requiring special equipment), between Nashville and Lebanon, TN, over US Hwy 70, serving all intermediate points. Condition: Issuance of a certificate in this proceeding is conditioned upon either (a) the prior cancellation, at applicant's request, of its certificate of registration, or (b) the successful conversion of that certificate of registration to a certificate of public convenience and necessity in No. MC 121568 Sub-10. (Hearing site: Nashville, TN.)

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 123048 (Sub-479F), filed March 17, 1980. Applicant: DIAMOND TRANSPORTATION SYSTEM INC., 5021 21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Transporting *such commodities* as are dealt in or used by manufacturers of construction and material handling equipment (except commodities in bulk), between Yankton, SD, on the one hand, and, on the other, points in the U.S. (except AK, HI, AZ, CA, NV, and NM), restricted to traffic originating at or destined to Yankton, SD. (Hearing site: Omaha, NE, or Chicago, IL.)

MC 123329 (Sub-54F), filed March 6, 1980. Applicant: H. M. TRIMBLE & SONS LTD., a corporation, P.O. Box 3500, Calgary, Alberta Canada T2P 2P9. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. In foreign commerce only, transporting *wine concentrate, wine, and grape juice*, in bulk, in tank vehicles, from Naples, Canandaigua, and Hammondsport, NY, to the ports of entry on the international boundary line between the U.S. and Canada in ND. (Hearing site: Great Falls, MT.)

MC 124078 (Sub-1019F), filed March 17, 1980. Applicant: SCHWERTMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Transporting *salt cake*, from Baltimore, MD, to West

Point, VA. (Hearing site: Washington, DC.)

MC 125368 (Sub-105F), filed March 11, 1980. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher (same address as applicant). Transporting *glass and glass products*, from the facilities of Libbey-Owens-Ford Company at or near Toledo, OH to points in FL. (Hearing site: Washington, DC or Toledo, OH.)

MC 126118 (Sub-233F), filed March 17, 1980. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker (same address as applicant). Transporting *such commodities* as are dealt in by manufacturers and distributors of furniture and recreational products (except commodities in bulk, in tank vehicles), between the facilities of De-Luxe Distributors, Inc., at or near Omaha, NE, on the one hand, and, on the other, points in the U.S. (except AK, HI, and NE), restricted to traffic originating at or destined to the named facilities. (Hearing site: Omaha or Lincoln, NE.)

Note.—Dual operations may be involved.

MC 127539 (Sub-83F), filed March 17, 1980. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Avenue, East, Tacoma, WA 98424. Representative: Michael D. Duppenhaler, 211 South Washington Street, Seattle, WA 98104. Transporting *such commodities* as are dealt in or used by grocery and food business houses, in vehicles equipped with mechanical refrigeration, between points in ID, NV, and UT, on the one hand, and, on the other, Seattle, WA, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Seattle, WA.)

MC 128448 (Sub-2F), filed March 17, 1980. Applicant: VICTOR LEASING CO., d.b.a. WESTLUND TRUCKING CO., 3003 Niles Street, Bakersfield, CA 93306. Representative: Fred H. Mackensen, 9454 Wilshire Boulevard, suite 400, Beverly Hills, CA 90212. *Contract carrier*, transporting *welding supplies and calcium carbide*, between Bakersfield, CA, on the one hand, and, on the other, those points in OR on and west of U.S. Hwy 97, under continuing contract(s) with Hopper, Inc., of Bakersfield, CA. (Hearing site: Bakersfield or Los Angeles, CA.)

MC 128988 (Sub-104F), filed March 12, 1980. Applicant: JO/KEL, INC., 15580 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same address as applicant.) *Contract carrier*,

transporting (1)(a) *outdoor recreational equipment, heating and air conditioning and equipment*, and (b) *parts* for the commodities in (1)(a) above, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of The Coleman Company, Inc. (Hearing site: Kansas City, MO.)

MC 129908 (Sub-34F), filed March 5, 1980. Applicant: AMERICAN FARM LINES, INC., 8125 South west 15th Street, Oklahoma City, OK 73107. Representative: T. J. Blaylock (same address as applicant). Transporting *paper products, and expanded plastic and rubber products*, from the facilities of Cellu Products Company in NC, to points in AR, LA, and TN. (Hearing site: Charlotte, NC.)

MC 129908 (Sub-36F), filed March 14, 1980. Applicant: AMERICAN FARM LINES, INC., 8125 South west 15th Street, Oklahoma City, OK 73107. Representative: T. J. Blaylock (same address as applicant). Transporting (1) *drugs, toilet preparations, and packaging materials*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (a) from the facilities of Beecham Laboratories, at Bristol, TN, to Omaha, NE, Myerstown, PA, and Piscataway, NJ, and (b) from points in DE, IL, PA, MD, MO, NJ, and NY, to the facilities of Beecham Laboratories, at Bristol, TN. (Hearing site: Oklahoma City, OK, or Dallas, TX.)

MC 133119 (Sub-177F), filed March 12, 1980. Applicant: HEYL TRUCK LINES, INC., P.O. Box 206, 200 Norka Drive Akron, IA 51001. Representative: A. J. Swanson, P.O. Box 1103, 226 North Phillips Avenue, Sioux Falls, SD 57101. Transporting *foodstuffs* (except in bulk), from the facilities of Vlasic Foods, Inc., (1) at or near Imlay City, Bridgeport, and Memphis, MI, to points in WI, MN, ND, SD, IA, NE, MO, and CO, and (2) at or near Greenville, MS, to points in NM, CO, TX, OK, KS, MO, AR, LA, TN, KY, AL, GA, FL, IL, and IN, and (3) between the facilities of Vlasic Foods, Inc., at or near (a) Imlay City, Bridgeport, and Memphis, MI, and (b) Greenville, MS. (Hearing site: Sioux Falls, SD or Detroit, MI.)

MC 133178 (Sub-4F), filed March 10, 1980. Applicant: PAPER CARGO CORP., P.O. Box 13, Grandville, MI 49418. Representative: George A. Pendleton, P.O. Box 51, 5116 Brookgate, Northwest, Comstock Park, MI 49321. *Contract carrier*, transporting *paper and paper*

products, and paper mill supplies, between the facilities of Packaging Corporation of America, at (a) Grand Rapids, Grandville, Wyoming, Filer City, Plymouth, and Portage, MI, (b) Rittman, Middletown, Ashland, Akron, Cleveland, Cuyahoga Falls, Youngstown, and Mentor, OH, (c) Vincennes, Griffith, and Indianapolis, IN, (d) Chicago, IL, and (e) Burlington, WI, on the one hand, and, on the other, Pittsburgh, PA, Louisville, KY, St. Louis, MO, and points in IL, IN, MI, OH, and WI, under continuing contract(s) with Packaging Corporation of America, of Grand Rapids, MI. (Hearing site: Lansing, MI, or Chicago, IL.)

MC 133689 (Sub-334F), filed March 10, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples Street, Northeast, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010 West St. Paul, MN 55118. Transporting (1)(a) *Welders, battery chargers, electrical materials and equipment, and welding supplies*, and (b) *parts* from the commodities in (1)(a) above, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Minneapolis, MN, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: St. Paul, MN.)

MC 133689 (Sub-338F), filed March 11, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples Street, Northeast, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *steel shelving*, from the facilities of The Hirsh Company at Skokie, IL, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: St. Paul, MN.)

MC 136109 (Sub-2F), filed March 17, 1980. Applicant: HETEM BROS., INC., 601 Commerce Road, Linden, NJ 07036. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street, NW., Washington, DC 20001. *Contract carrier, transporting petroleum products and chemicals*, (in bulk, in tank vehicles), between points in Union, Hudson, and Middlesex Counties, NJ, and East Providence, RI, on the one hand, and, on the other, points in ME, VT, NH, MA, CT, RI, NY, NJ, PA, DE, MD, VA, and DC, under continuing contract(s) with Union Chemicals Division, Union Oil Company of California. (Hearing site: Washington, DC.)

MC 136818 (Sub-110F), filed March 17, 1980. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Road, P.O. Box 3902,

Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Road, suite 320, Phoenix, AZ 85008. Transporting (1) salt and salt products (except commodities in bulk), and (2) *materials and supplies* used in the agricultural, water treatment, food processing, wholesale grocery, and institutional supply industries, in mixed loads with the commodities in (1) above (except commodities in bulk), from the facilities of Morton Salt Division of Morton-Norwich Products, Inc., at or near Newark, CA, to points in AZ, CO, ID, NV, NM, and UT. (Hearing site: Phoenix, AZ.)

Note.—Dual operations may be involved.

MC 138308 (Sub-110F), filed March 10, 1980. Applicant: KLM, INC., Old Highway 49 South, P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting (1) *electrical transformers, transformer parts, pole and transmission line hardware and construction materials, electrical appliances, and electrical equipment* (except commodities which because of size or weight require the use of special equipment), and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities in (1) above (except commodities in bulk), between the facilities used by McGraw Edison Co., in CA, IL, MS, NJ, NY, NC, OH, PA, SC, TX, and WI, on the one hand, and, on the other points in the U.S. (Except AK and HI), restricted in (1) and (2) above to traffic originating at or destined to the named facilities. (Hearing site: Pittsburgh, PA, or Jackson, MS.)

Note.—Dual operations may be involved.

MC 138438 (Sub-81F), filed March 7, 1980. Applicant: D. M. BOWMAN, INC., Route 2, Bx 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Avenue, Hagerstown, MD 21740. Transporting (1) *portable and fabricated iron and steel storage buildings and cabinets*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between Hagerstown, MD, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Hagerstown, MD.)

Note.—Dual operations may be involved.

MC 138469 (Sub-226F), filed March 3, 1980. Applicant: DONCO CARRIERS, INC., 4720 Southwest 20th Street, Oklahoma City, OK 73128. Representative: Jack H. Blanshan, 205 West Toughy Avenue, suite 200, Park Ridge, IL 60068. Transporting *paper and paper products, plastic and plastic*

products, glassware, and foodstuffs, (except commodities in bulk, in tank vehicles), from points in the U.S. (except AK and HI), to the facilities of Cardinal Paper Co., at (a) Jackson, MS, (b) Albuquerque, NM, (c) Oklahoma City, OK, (d) Nashville, TN, and (e) San Antonio, TX, restricted to traffic originating at the indicated origins and destined to the named facilities. (Hearing site: Dallas, TX, or Oklahoma City, OK.)

MC 138469 (Sub-227F), filed March 11, 1980. Applicant: DONCO CARRIERS, INC., 4720 Southwest 20th Street, Oklahoma City, OK 73128. Representative: Jack H. Blanshan, 205 West Toughy Avenue, suite 200, Park Ridge, IL 60068. Transporting *frozen foods*, in vehicles equipped with mechanical refrigeration, from the facilities of Pet, Incorporated, at (a) Atlanta, GA, (b) Frankfort, MI, and (c) Allentown and Chambersburg, PA, to points in the U.S. (except AK and HI), restricted to traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: St. Louis or Kansas City, MO.)

MC 139958 (Sub-11F), filed March 10, 1980. Applicant: R. T. TRUCK SERVICE, INC., 4319 Campground Road, Louisville, KY 40216. Representative: Rudy Yessin, 314 Wilkinson Street, Frankford, KY 40601. Transporting (1) *communication cable*, (2) *iron and steel wire*, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) and (2) above, (except commodities in bulk), between the facilities of Anaconda Wire and Cable Co., at LaGrange, KY on the one hand, and, on the other, points in KY, IN, IL, OH, WV, MI, MO, TN, GA, NC, LA, AL, SC, VA, PA, AR, TX, NY, MN, WI, NJ, and MS. (Hearing site: Washington, DC.)

Note.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 142449 (Sub-9F), filed March 17, 1980. Applicant: SPEEDWAY HAULERS, INC., P.O. Box 1463, South Bend, IN 46624. Representative: James L. Beatty, 130 East Washington Street, suite 1000, Indianapolis, IN 46204. Transporting *insulating materials, and materials and supplies* used in the manufacture and distribution of insulating materials, between New Carlisle, IN, on the one hand, and, on the other, points in IL, MI, OH, KY, and WI. (Hearing site: Indianapolis, IN.)

MC 142508 (Sub-148F), filed March 19, 1980. Applicant: NATIONAL

TRANSPORTATION, INC., 10810 South 144th Street, P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting *automobile parts*, from the facilities of Corning Distribution at Corning, AR, to points in the U.S. (except AK and HI). (Hearing site: St. Louis, MO, or Memphis, TN.)

MC 142508 (Sub-149F), filed March 6, 1980. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th Street, P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting *egg products, and equipment, materials, and supplies* used in the manufacture and distribution of egg products, between points in the U.S. (except AK and HI) restricted to traffic originating at or destined to the facilities of The Milton G. Waldbaum Company. (Hearing site: Omaha, or Lincoln, NE.)

MC 142539 (Sub-8F), filed March 17, 1980. Applicant: B.W.T. TRANSPORT, INC., 757 River Drive, Passaic, NJ 07055. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier*, transporting *chemicals* (except in bulk), from Baltimore, MD, Chicago, IL, Greensboro, NC, Houston, TX, and New York, NY, to points in the U.S. (except AK and HI), under continuing contract(s) with Laporte (North America) Ltd., of Hackensack, NJ. (Hearing site: Newark, NJ.)

MC 142559 (Sub-153F), filed March 17, 1980. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. Transporting (1) *paper, paper products, wood products, and plastic and plastic products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), (a) between the facilities of Crown-Zellerbach in CA or OR, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, KS, OK, and TX; (b) between points in CA and OR, and (c) between those points in the U.S. in and east of MN, IA, MO, KS, OK, and TX, restricted in (b) and (c) to traffic originating at and destined to the facilities of Crown-Zellerbach. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 142998 (Sub-12F), filed March 18, 1980. Applicant: LAUGHLIN LINES, INC., 2527 North Carson Street, Suite, 205, Carson City, NV 89701. Representative: Harley E. Laughlin (same address as applicant). Transporting *frozen foods*, from

Hartford and Wethersfield, CT, to Syracuse, NY, Allentown, PA, Atlanta, GA, Ontario, OR, Dallas, TX, Burley, ID, Greenville, MI, Plover, WI, Massillon, OH, and Bonner Springs, KS. (Hearing site: Reno, NV.)

MC 143059 (Sub-117F), filed March 12, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). Transporting (1) *sulphur*, in bags, and (2) *bags*, between the facilities of International Chemicals, Inc. at or near (a) Mt. Pleasant, TX, and (b) Middlepoint, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the named facilities. (Hearing site: Louisville, KY, or Washington, DC.)

MC 143328 (Sub-35F), filed March 17, 1980. Applicant: EUGENE TRIPP TRUCKING, a corporation, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Avenue, NW., Washington, DC 20036. Transporting *alcoholic beverages*, from points in CA to points in MT. (Hearing site: San Francisco, CA.)

MC 143868 (Sub-11F), filed March 14, 1980. Applicant: R.E.T.E.N.O. CARRIERS, INC., P.O. Box 1438, Willmar, MN 56201. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Contract carrier*, in foreign commerce only, transporting *bar steel, coil steel, and extruded steel*, in vehicles equipped with mechanical refrigeration, from points in IL, IN, MA, OH, and PA, to ports of entry on the international boundary line between the U.S. and Canada at Detroit, MI, and Buffalo and Niagara Falls, NY, under continuing contract(s) with Hifield Corporation of Canada. (Hearing site: Seattle, WA.)

MC 144129 (Sub-1F), filed March 12, 1980. Applicant: QUICKWAY EXPRESS, INC., R.D. 2, Tunkhannock, PA 18657. Representative: James K. Peck, Jr., 506 Penn Security Bank Building, Scranton, PA 18503. Transporting *coal, sand and gravel*, from points in Lackawanna, Wyoming, and Luzerne Counties, PA, to points in AR, CT, DE, IL, IN, IA, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, PA, RI, TN, TX, VT, VA, WV, and WI.

MC 144168 (Sub-5F), filed March 14, 1980. Applicant: R. E. GARRISON TRUCKING, INC., P.O. Box 186, Cullman, AL 35055. Representative: Michael M. Knight (same address as applicant). Transporting (1) *drug and toilet preparations*, (2) *chewing gum and confectionery products*, and (3)

materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities in (1) and (2) above, between the facilities of Warner-Lambert Company and its subsidiaries in MA, PA, CT, IL, NJ, NY, CA, MI, GA, and TX, on the one hand, and, on the other, points in AL, CA, FL, GA, IL, NJ, NY, AZ, MI, OR, WA, and TX. (Hearing site: Atlanta, GA.)

MC 144498 (Sub-2F), filed March 19, 1980. Applicant: HIX TRANSPORT, INC., 4129 N—500 E, Van Buren, IN 46991. Representative: Robert W. Loser, 1101 Chamber of Commerce Building, Indianapolis, IN 46204. *Contract carrier*, transporting such commodities as are dealt in or used by grocery and food business houses, (except commodities in bulk), in vehicles equipped with mechanical refrigeration, between points in MO, IN, IL, OH, KY, and TX, restricted to traffic originating at or destined to the facilities of The Kroger Co., under continuing contract(s) with The Kroger Co., of Cincinnati, OH. (Hearing site: Indianapolis, IN, or Cincinnati, OH.)

MC 144859 (Sub-5F), filed March 14, 1980. Applicant: SCOTT PALLETES, INC., Box 341, Amelia, VA 23002. Representative: Calvin F. Major, 200 West Grace Street, Richmond, VA 23220. *Contract carrier*, transporting *steel products*, from Irwin, Allenport, Aliquippa, Fairless Hills, and Pittsburgh, PA, Wheeling, WV, Yorkville, OH, and Sparrow's Point and Baltimore, MD, to the facilities of Hon Industries at Chester and Troy, VA, under continuing contract(s) with The Hon Company, of Chester, VA. (Hearing site: Richmond, VA.)

MC 144938 (Sub-4F), filed March 11, 1980. Applicant: BILLY L. NORTH, d.b.a. VETERANS TRUCKING 97 27th Avenue, Northwest, Gig Harbor, WA 98335. Representative: Billy L. North (same address as applicant). *Contract carrier*, transporting *wood doors*, from Tacoma, WA, to points in CA, AZ, and NV, under continuing contract(s) with West Coast Door Inc., of Tacoma, WA. (Hearing site: Tacoma or Seattle, WA.)

MC 145468 (Sub-33F), filed March 11, 1980. Applicant: K.S.S. TRANSPORTATION CORP., Route 1 and Adams Station, P.O. Box 3052, North Brunswick, NJ 08902. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. Transporting *meats, meat products and meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766

(except hides and commodities in bulk), from Tama, IA, to points in AL, CA, FL, and GA. (Hearing site: Des Moines, IA or Omaha, NE.)

Note.—Dual operations may be involved.

MC 146479 (Sub-6F), filed March 17, 1980. Applicant: HARRISON CARRIERS, INC., P.O. Box 367, Harrison, NY 10528. Representative: David M. Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Transporting *such commodities* as are dealt in by manufacturers of electrical appliances, between the facilities of North American Philips Corp., in CT and NY, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Hartford, CT, or Boston, MA.)

Note.—Dual operations may be involved.

MC 147348 (Sub-8F), filed March 17, 1980. Applicant: SOUTHWEST FREIGHT DISTRIBUTORS, INC., 1320 Henderson, North Little Rock, AR 72114. Representative: James M. Duckett, 127 Pyramid Life Building, Little Rock, AR 72201. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Constantin Distribution Corporation at North Little Rock, AR, to points in AR. (Hearing site: Little Rock, AR or Dallas, TX.)

Note.—Dual operations may be involved.

MC 147399 (Sub-2F), filed December 5, 1979, previously noticed in Federal Register issue of March 27, 1980. Applicant: JACK B. ROBERTSON d.b.a. J. R. TRANSPORT, 800 Carden Street, San Leandro, CA 94577. Representative: George M. Carr, 235 Montgomery Street, Suite 1620, San Francisco, CA 94104. Contract carrier, transporting *such commodities* as are dealt in by department stores or mail order houses (except commodities in bulk, and those requiring special equipment), between the facilities of Montgomery Ward & Co., Inc., at Oakland and San Leandro, CA, on the one hand, and, on the other, the facilities of Montgomery Ward & Co., Inc., at Portland, OR, under continuing contract(s) with Montgomery Ward & Co., Inc., of Chicago, IL. (Hearing site: San Francisco, CA, or Portland, OR.)

Note.—This republication adds San Leandro to the territorial description.

MC 147979 (Sub-2F), filed March 14, 1980. Applicant: ROAD KING TRUCKING, INC., Route 4, Box 235-B, Bardstown, KY 40004. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *foodstuffs* (except frozen and in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Shedd Foods, Inc., at Louisville, KY, to points in the U.S. (except AK and HI). (Hearing site: Louisville, KY.)

MC 148158 (Sub-8F), filed March 12, 1980. Applicant: CONTROLLED DELIVERY SERVICE, INC., P.O. Box 1299, City of Industry, CA 91749. Representative: Patricia M. Schnegg, 707 Wilshire Boulevard, 1800 United California Bank Building, Los Angeles, CA 90017. Transporting *dehydrated potatoes, onions, and garlic*, from the facilities of Ampco Foods, Inc., in Madison, Bonneville, and Bingham Counties, ID, to points in the U.S. (except AK and HI). (Hearing site: Los Angeles, CA.)

Note.—Dual operations may be involved.

MC 148208 (Sub-5F), filed March 7, 1980. Applicant: FUR BREEDERS AGRICULTURAL COOPERATIVE, a corporation, P.O. Box 295, Midvale, UT 84047. Representative: C. Reed Brown, 1300 Walker Bank Building, Salt Lake City, UT 84111. Transporting *tallow, and meat and bone meal*, in bulk, from the facilities of Intermountain Protein Products at West Jordan, UT, to the facilities of Ralston Purina (a) at or near Sparks, NV and (b) in CA. Condition: Carrier shall conduct its for-hire motor carrier activities and its other activities independently and shall maintain separate records for each. (Hearing site: Salt Lake City, UT, or Washington, DC.)

MC 148508 (Sub-2F), filed March 17, 1980. Applicant: BEN O. STOLTZFUS, Box 217 D, R.D. No. 2, Honey Brook, PA 19344. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting *paper and paper products*, from the facilities of Georgia Pacific Corporation at or near Reading, PA, to points in AZ, AR, CA, CT, FL, GA, IL, KS, MD, MA, MO, NC, OH, OK, OR, SC, TN, TX, UT and VA. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 148838 (Sub-2F), filed March 4, 1980. Applicant: GEAUGA TRUCK LINES, INC., 705 U.S. State Route 224, Nova, OH 44859. Representative: Norman A. Cooper, 145 West Wisconsin Avenue, Neenah, WI 54956. Contract carrier, transporting (1) *scrap graphite, electrodes, carbon raiser, anthracite coal, graphite powder, and recycled graphite*; and (2) *materials and supplies* used in the manufacture, distribution, and sale of the commodities in (1)

above, between points in the U.S. (except AK and HI) under continuing contract(s) with Graphite Sales, Inc., of Chagrin Falls, OH. (Hearing site: Cleveland, OH or Chicago, IL.)

MC 149108 (Sub-1F), filed March 10, 1980. Applicant: R. REED TRUCKING, INC., 8383 Croton Road, Johnston, OH 43031. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Contract carrier, transporting (1) *rods and wire products*, from the facilities of Robertson Wire Products Company at or near Batavia and Mt. Sterling, OH, to points in the U.S. (except AK and HI), and (2) *materials and supplies* used in the manufacture of rods and wire products (except commodities in bulk), in the reverse direction, under continuing contract(s) with Robertson Wire Products Company of Batavia, OH. (Hearing site: Columbus, OH.)

MC 149128 (Sub-2F), filed March 10, 1980. Applicant: D. J. BURCH, d.b.a. BURCH TRUCKING, 3510 Cottontail, Casper, WY 82601. Representative: D. J. Burch (same address as applicant). Transporting (1) *machinery, materials, equipment, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (2) *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof, (except complete oil drilling rigs), between points in CO, UT, ID, MT, ND, SD, NE, NM, and WY. (Hearing site: Casper, WY.)

MC 149218 (Sub-1F), filed February 19, 1980. Applicant: SUNBELT EXPRESS INC., 118 Hamilton Circle, Bremen, GA 30110. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting (1) *such commodities* as are dealt in by grocery houses, retail chain department stores, medical supply houses, and drug stores, from the facilities of Colgate-Palmolive Company, Inc., at or near Jeffersonville, IN, to points in AL, FL, GA, and TN; and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 150078 (Sub-1F), filed February 28, 1980. Applicant: FALL MT. TRANSPORT, INC., P.O. Box 170, Charlestown, NH 03603. Representative: James M. Burns, 1383 Main Street, suite

413, Springfield, MA 01103. *Contract carrier, transporting petroleum and petroleum products, in bulk, in tank vehicles, from Boston and West Boylston, MA, to points in NH and VT, under a continuing contract(s) with Johnson Petroleum, Inc., of Chelsea, MA.* (Hearing site: Boston, MA, or Washington, DC.)

MC 150118 (Sub-1F), filed March 17, 1980. Applicant: O. C. LUKKEN, INC., 2801 E. Street, South Sioux City, NE 68776. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. *Transporting (1) meats, meat products and meat by-products, and articles distributed by meat-packing houses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Dubuque Pack at LeMars, IA, to points in IL, MN, MO, SD, and WI, and (2) inedible meat, between points in IA, IL, MN, MO, NE, and WI.* (Hearing site: Omaha, NE.)

MC 150178 (Sub-1F), filed March 5, 1980. Applicant: GARY GAMBER, d.b.a. Gamber Trucking, RR No. 1, Juron, SD 57350. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Contract carrier, transporting meats, meat products and meat by-products, and articles distributed by meat-packinghouses as described in Section A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides, and commodities in bulk, in tank vehicles), from the facilities of Huron Dressed Beef, Inc., at Huron, SD, to points in CO, IL, IA, KS, MN, MO, ND, NE, OK, and WI, under continuing contract(s) with Huron Dressed Beef, Inc., of Huron, SD.* (Hearing site: Sioux Falls, SD.)

Note.—Dual operations may be involved.

MC 150209 (Sub-1F), filed March 6, 1980. Applicant: E. & G. MOTOR EXPRESS, INC., U.S. Highway 42, Carrollton, KY 41008. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602. *Transporting appliances and appliance parts, and materials, equipment, and supplies used in the manufacture and distribution of appliances and appliance parts, between the facilities used by General Electric Company at Louisville, KY, on the one hand, and, on the other, Augusta, Brooksville, Maysville, and Vanceburg, KY, and those points in OH on, south, and west of a line beginning at the IN-OH State line and extending along U.S. Hwy 40 to junction U.S. Hwy 23, and then along U.S. Hwy 23 to the*

OH-KY border. (Hearing site: Louisville, KY.)

[FR Doc. 80-18773 Filed 6-23-80; 8:46 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 52-80]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice, Executive Office for U.S. Trustees (EOUST) has established a system of records.

The U.S. Trustee Timekeeping System (JUSTICE/UST-003), is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published in the Federal Register.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, OMB, and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Justice Management Division, Room 1214, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530. However, a waiver of the 60-day waiting period has been requested of OMB. If the waiver is granted, the system will continue operating. If the waiver is not granted, the system will cease operating for 60 days. If no comments are received, the system will be implemented without further notice in the Federal Register. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: June 12, 1980.

Kevin D. Rooney,
Assistant Attorney General for
Administration.

Justice/UST-003

SYSTEM NAME:

U.S. Trustee Timekeeping System.

SYSTEM LOCATION:

Eleven offices of the United States Trustees (see appendix identified as JUSTICE/UST-999) and the Executive Office for U.S. Trustees (EOUST).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Nonclerical employees of the U.S. Trustees' offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes employees' names and a record of their work time by program activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 11 U.S.C., and 28 U.S.C. 522.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system consists of a record of the work time, by program activity, of nonclerical employees of the U.S. Trustee pilot program. The system is used by the EOUST to analyze workload as a basis for requesting and allocating personnel and other resources. This information is compiled in each of the 11 field offices and forwarded to EOUST for analysis.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Service: A record from the system of records may be disclosed to the National Archives and Records Service (NARS) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept on forms UST-4a, UST-4b, UST-4c and UST-4d, which are filed in metal cabinets.

RETRIEVABILITY:

Information is maintained alphabetically by the name of the employee. In EOUST, duplicate records are maintained and organized by district.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures

governing the handling of official records. During duty hours access to this system is monitored and controlled by U.S. Trustee office personnel. During nonduty hours offices are locked.

RETENTION AND DISPOSAL:

Maintenance and disposition schedules are being developed within the Executive Office for U.S. Trustees. There is presently no authority to destroy any document within this system.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager for the system in each office, is the U.S. Trustee. (See appendix of addresses identified as JUSTICE/UST-999.)

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request".

CONTESTING RECORDS PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Nonclerical employees of the U.S. Trustees' offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/UST-999

SYSTEM NAME:

U.S. Trustee Appendix 1—List of Record Location Addresses

Executive Office for U.S. Trustees, Room 4260, Main Justice Bldg., Washington, D.C. 20530.

Districts of Maine, Massachusetts, New Hampshire, and Rhode Island:

Ten Post Office Square—Room 415, Boston, Massachusetts 02109.

Southern District of New York:

Federal Building—Room 306, 26 Federal Plaza, New York, NY 10007.

Districts of Delaware and New Jersey:

1180 Raymond Boulevard—Room 2549, Newark, New Jersey 07102.

Eastern District of Virginia and District of Columbia:

Post Office Box 50062, F Street Station, Washington, D.C. 20004.

Northern District of Alabama:

Frank Nelson Building—Suite 831, 2nd Avenue and 20th Street, Birmingham, Alabama 35203.

Northern District of Texas:

U.S. Courthouse—Room 9C60, 1100 Commerce Street, Dallas, Texas 75242.

Northern District of Illinois:

Insurance Exchange Building—Room A 1303, 175 West Jackson Street, Chicago, IL 60601.

Districts of Minnesota, North Dakota and South Dakota:

U.S. Courthouse—Room 454, 110 South Fourth Street, Minneapolis, Minnesota 55401.

Central District of California:

U.S. Courthouse—Room 514, 312 N. Spring Street, Los Angeles, California 90012.

Districts of Colorado and Kansas:

Columbine Building—Room 202, 1845 Sherman Street, Denver, Colorado 80203.

U.S. Courthouse—Room 501, 401 North Market, Wichita, Kansas 67202.

[FR Doc. 80-19020 Filed 6-23-80; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 51-80]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice, Executive Office for U.S. Trustees (EOUST) has established a system of records.

The Panel Trustee Application File (JUSTICES/UST-002), is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published in the Federal Register.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, OMB, and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Justice Management Division, room 1214, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530. However, a waiver of the 60-day waiting period has been requested of OMB. If the waiver is granted, the system will continue operating. If the waiver is not granted, the system will cease operating for 60 days. If no comments are received, the system will

be implemented without further notice in the Federal Register. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: June 12, 1980.

Kevin D. Rooney,

Assistant Attorney General for Administration.

Justice/UST-002

SYSTEM NAME:

Panel Trustee Application File.

SYSTEM LOCATION:

Eleven offices of the United States Trustees. (See appendix identified as JUSTICE/UST-999).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for membership on the private panels of trustees eligible to serve as trustees in Chapter 7 bankruptcy cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Panel Trustee Application File (UST-002), may also include resumes, letters of recommendation, notes reflecting oral checking of references, school transcripts, and other supporting information provided by applicants or developed by the U.S. Trustee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These systems are established and maintained pursuant to 28 U.S.C. 586(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by the individual U.S. Trustee office in which they are maintained. Their sole purpose is for determining the qualifications and eligibility of persons applying to serve as trustees in Chapter 7 bankruptcy cases. The records are periodically reviewed by the Executive Office for U.S. Trustees.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Service: A record

from the system of records may be disclosed to the National Archives and Records Service (NARS) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are filed in paper folders in metal filing cabinets.

RETRIEVABILITY:

Folders are filed alphabetically by the applicant's name.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures governing the handling of official records. During duty hours access to this system is monitored and controlled by U.S. Trustee office personnel. During nonduty hours offices are locked.

RETENTION AND DISPOSAL:

Maintenance and disposition schedules are being developed within the Executive Office for U.S. Trustees. There is presently no authority to destroy any information within this system.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager for the System in each office, is the U.S. Trustee. (See appendix of addresses identified as JUSTICE/UST-999.)

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request".

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Information contained in the system is provided by the applicant, the applicant's references, and interested third parties.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/UST-999

SYSTEM NAME:

U.S. Trustee Appendix 1—List of of Record Location Addresses.

Executive Office for U.S. Trustees, Room 4260, Main Justice Bldg., Washington, D.C. 20530.

Districts of Maine, Massachusetts, New Hampshire, and Rhode Island:

Ten Post Office Square—Room 415, Boston, Massachusetts 02109.

Southern District of New York:

Federal Building—Room 306, 28 Federal Plaza, New York, NY 10007.

Districts of Delaware and New Jersey:

1180 Raymond Boulevard—Room 2549, Newark, New Jersey 07102.

Eastern District of Virginia and District of Columbia:

Post Office Box 50062, F Street Station, Washington, D.C. 20004.

Northern District of Alabama:

Frank Nelson Building—Suite 831, 2nd Avenue and 20th Street, Birmingham, Alabama 35203.

Northern District of Texas:

U.S. Courthouse—Room 9C60, 1100 Commerce Street, Dallas, Texas 75242.

Northern District of Illinois:

Insurance Exchange Building—Room A 1303, 175 West Jackson Street, Chicago, IL 60601.

Districts of Minnesota, North Dakota, and South Dakota:

U.S. Courthouse—Room 454, 110 South Fourth Street, Minneapolis, Minnesota 55401.

Central District of California:

U.S. Courthouse—Room 514, 312 N. Spring Street, Los Angeles, California 90012.

Districts of Colorado and Kansas:

Columbine Building—Room 202, 1845 Sherman Street, Denver, Colorado 80203.

U.S. Courthouse—Room 501, 401 North Market, Wichita, Kansas 67202.

[FR Doc. 80-19019 Filed 6-23-80; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 50-80]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice, Executive Office for U.S. Trustees proposes to establish a new system of records to be maintained by the United States Trustees.

The Bankruptcy Case Files and Associated Records (JUSTICE/UST-001), is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published in the Federal Register.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, OMB, and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Justice Management Division, Room 1214, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530. However, a waiver of the 60-day waiting period has been requested of OMB. If the waiver is granted, the system will continue operating. If the waiver is not granted, the system will cease operating for 60 days. If no comments are received from either the public, OMB, or the Congress on or before August 24, 1980, the system will be implemented without further notice in the Federal Register. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: June 12, 1980.

Kevin D. Rooney,
Assistant Attorney General for Administration.

Justice/UST-001

SYSTEM NAME:

Bankruptcy Case Files and Associated Records.

SYSTEM LOCATION:

Eleven offices of the United States Trustees. (See appendix identified as JUSTICE/UST-999.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in bankruptcy proceedings (under Chapters 7, 11 and 13 of 11 U.S.C.) subsequent to September 30, 1979, including but not limited to debtors, creditors, bankruptcy trustees, agents representing debtors, creditors, and trustees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) petitions/orders for relief, (b) schedules of assets and liabilities of bankrupts, (c) lists of creditors, (d) statements of debtors' financial affairs, (e) docket cards (UST-001, 002, 003, and

any alterations thereof), (f) alphabetical cross-reference index cards, (g) general correspondence regarding cases, (h) miscellaneous investigative records, (i) copies of certain petitions, pleadings or other papers filed with the court, including UST recommendations to court for appointment of trustee or examiner in Chapter 11, recommendations for dismissal or conversion, recommendations as to dischargeability, (j) appraisal reports, (k) names of approved depositories and amounts of funds deposited therein, (l) names of sureties and amounts of trustees' bonds, (m) tape or other recordings of creditors' meetings called pursuant to Section 341 of Title 11, U.S.C., for the purpose of examination of debtors by creditors, trustee and others, (n) plans filed under Chapters 11 or 13, (o) lists of persons serving as counsel, trustee, or other functionaries in bankruptcy cases, including compensation earned or sought by each, (p) lists of attorneys representing creditors in bankruptcy cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These systems are established and maintained pursuant to 28 U.S.C. 586 and 11 U.S.C., especially Chapter 15 thereof.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by personnel of the U.S. Trustee office where maintained, to determine the existence in the office of a case, to ascertain the status of actions with respect to that case, and to ensure that timely action is taken as appropriate, and to ascertain the involvement by agents or other representatives of parties in such cases.

As provided by 11 U.S.C. 107, a paper filed in a case and the dockets of the bankruptcy court are public records and open to examination except when the court moves to protect an entity with respect to a trade secret, confidential research, development, or commercial information, or to protect a person with respect to a scandalous or defamatory matter contained in a paper filed in a case. In this case, that portion of the record is only available upon the consent of the debtor. In addition, except when the Court has moved to protect an entity, the records will be released as follows.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice

unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 *et seq.*, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Service: A record from the system of records may be disclosed to the National Archives and Records Service (NARS) for records management inspections conducted under the authority of 44 U.S.C. Secs. 2904 and 2906.

Release of information to law enforcement or regulatory agencies: Information obtained by the U.S. Trustee will be transmitted to appropriate state, local, Federal or other law enforcement or regulatory agencies whenever a U.S. Trustee or the Director, Executive Office for U.S. Trustee or his designee believes that such transmittal is in the public interest, except to the extent that such transmittal would conflict with any immunity granted by a court of competent jurisdiction in accordance with the provisions of Title 11, U.S.C.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information, except that specified below in this paragraph, is recorded on basic paper/cardboard material and maintained within metal file boxes, file cabinets, electric file/card retrievers or safes. Some material is recorded and stored on magnetic tape, for possible reproduction in paper form at a later date.

RETRIEVABILITY:

Information is maintained by bankruptcy court docket number, and is cross-referenced alphabetically by names of debtors. Information with respect to agents representing debtors, creditors and trustees, and with respect to depository banks, is maintained alphabetically.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with

Departmental rules and procedures governing the handling of office records. During duty hours access to this system is monitored and controlled by U.S. Trustee office personnel. During nonduty hours offices are locked.

RETENTION AND DISPOSAL:

Maintenance and disposition schedules are being developed within the Executive Office for U.S. Trustee. There is presently no authority to destroy any information within this system, except those documents which are duplicates of records for which the bankruptcy courts maintain the official record copies.

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the system in each office is the U.S. Trustee. (See appendix of addresses identified as JUSTICE/UST-999.)

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager for the judicial district in which the case is pending, or was administered. (See appendix of addresses identified as JUSTICE/UST-999.)

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall ordinarily be made in person at the U.S. Trustee office in which the case is filed.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (see appendix of addresses identified as JUSTICE/UST-999), stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this record are generally limited to debtors, creditors, trustees, examiners, attorneys and other agents participating in the administration of a case, judges of the bankruptcy courts and employees of the U.S. Trustee offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/UST-9

SYSTEM NAME:

U.S. Trustee Appendix 1—List of Record Location Addresses.

Executive Office for U.S. Trustee, Room 4260, Main Justice Bldg., Washington, D.C. 20530.

Districts of Maine, Massachusetts, New Hampshire, and Rhode Island:
Ten Post Office Square—Room 415,
Boston, Massachusetts 02109.

Southern District of New York:
Federal Building—Room 306, 26
Federal Plaza, New York, NY 10007.

Districts of Delaware and New Jersey:
1180 Raymond Boulevard—Room
2549, Newark, New Jersey 07102.

Eastern District of Virginia and District
of Columbia:
Post Office Box 50062, F Street
Station, Washington, D.C. 20004.

Northern District of Alabama:
Frank Nelson Building—Suite 831, 2nd
Avenue and 20th Street,
Birmingham, Alabama 35203.

Northern District of Texas:
U.S. Courthouse—Room 9C60, 1100
Commerce Street, Dallas, Texas
75242.

Northern District of Illinois:
Insurance Exchange Building—Room
A 1303, 175 West Jackson Street,
Chicago, IL 60601.

Districts of Minnesota, North Dakota
and South Dakota:
U.S. Courthouse—Room 454, 110
South Fourth Street, Minneapolis,
Minnesota 55401.

Central District of California:
U.S. Courthouse—Room, 514, 312 N.
Spring Street, Los Angeles,
California 90012.

Districts of Colorado and Kansas:
Columbine Building—Room 202, 1845
Sherman Street, Denver, Colorado
80203.

U.S. Courthouse—Room 501, 401
North Market, Wichita, Kansas
67202.

[FR Doc. 80-19018 Filed 6-23-80; 8:45 am]

BILLING CODE 4410-01-M

Office of Attorney General

Proposed Consent Decree in Action To Enjoin Discharge of Water Pollutants by Huffman Finishing Co., Granite Falls, N.C.

In accordance with Departmental Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that on June 16, 1980 a proposed consent decree in *United States of America v. Huffman Finishing Company* (W.D.N.C. Civ. No. St-C-79-13), was lodged with the United States District Court for the Western District of North Carolina. The proposed consent decree requires Huffman Finishing Company, which manufactures hosiery products, to pay a civil penalty of \$10,000 to the United States for exceeding effluent limitations contained in its National Pollutant Discharge

Elimination System (NPDES) permit. In addition, the decree requires Huffman to upgrade its wastewater treatment system to insure that it complies with the requirements of the Clean Water Act.

The proposed consent decree may be examined at the office of the United States Attorney, Room 251, United States Post Office and Courthouse, 401 West Trade Street, Charlotte, North Carolina, and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2644, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Huffman Finishing Company* (W.D.N.C. Civ. No. St-C-79-13), D.J. Ref. 90-5-1-1-1136.

Angus Macbeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-18979 Filed 6-23-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations

of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
 2. Employment trends in the same industry in the local area.
 3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.
 4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
 5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.
- All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training Administration, 601 D Street, N.W., Washington, D.C. 20013.

Signed at Washington, D.C. this 19th day of June 1980.

Earl T. Klein,

Director, Office of Program Services.

**Applications Received During the Week Ending
June 21, 1980**

Name of applicant and location of enterprise	Principal product or activity
Stimfold Manufacturing Company, Inc. Dothan, Alabama.	Manufacturing of steel bifold, steel door frames and with expansion planned into the steel entry door market.
Black Top Paving Company, Inc. Washington, Pennsylvania.	Manufacture of bituminous concrete (black top).
Carbondale, Convention Center, Inc. Carbondale, Illinois.	Motel and convention center.
Lenaro Paper Company Colchester, Connecticut.	Operation of garbage dump.

[FR Doc. 80-18954 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Washington

This notice announces the beginning of a new Extended Benefit Period in the State of Washington, effective on June 22, 1980.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(e) of the Act, the Washington unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment under the State unemployment compensation law equalled or exceeded the State trigger rate. 20 CFR 615.12(b) or (c). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A

benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State of Washington has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on June 7, 1980, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in that State.

Therefore, an Extended Benefit Period commenced in that State with the week beginning on June 22, 1980.

Information for Claimants

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to Extended Benefits in the State of Washington, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest Job Service Center of the Washington Employment Security Department in their locality.

Signed at Washington, D.C., on June 19, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 80-19027 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Illinois

This notice announces the beginning of a new Extended Benefit Period in the State of Illinois, effective on June 22, 1980.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(e) of the Act, the Illinois unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment under the State unemployment compensation law equalled or exceeded the State trigger rate. 20 CFR 615.12(b) or (c). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State of Illinois has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on June 7, 1980, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in that State.

Therefore, an Extended Benefit Period commenced in that State with the week beginning on June 22, 1980.

Information for Claimants

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to Extended Benefits in the State of Illinois, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest local employment office of the Illinois Department of Labor in their locality.

Signed at Washington, D.C., on June 19, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 80-19028 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Alabama

This notice announces the beginning of a new Extended Benefit Period in the State of Alabama, effective on June 22, 1980.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. The

Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

In accordance with section 203(e) of the Act, the Alabama unemployment compensation law provides that there is a State "one" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment under the State unemployment compensation law equalled or exceeded the State trigger. 20 CFR 615.12(b) or (c). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

Determination of "on" Indicator

The head of the employment security agency of the State of Alabama has determined, in accordance with the State law and 20 CFR 615.12(e), that the rate of insured unemployment in the State for the period consisting of the week ending on June 7, 1980, and the immediately preceding 12 weeks, rose to a point that equals or exceeds the State trigger rate, so that for that week there was an "on" indicator in that State.

Therefore, an Extended Benefit Period commenced in that State with the week beginning on June 22, 1980.

Information for Claimants

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to Extended Benefits in the State of Alabama, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest Unemployment Compensation Claims Office of the Alabama Department of Industrial Relations in their locality.

Signed at Washington, D.C., on June 19, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 80-19029 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-80-51-M]

ASARCO, Inc.; Petition for Modification of Application of Mandatory Safety Standard

ASARCO, Inc., P.O. Box 936, Leadville, Colorado 80461, has filed a petition to modify the application of 30 CFR 57.9-112 (trip lights on rail haulage) to its Leadville Unit Mine located in Lake County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Petitioner operates muck trains in which the swamper (driver's assistant) rides in the next to the last car of trains being pushed.

2. The use of trip lights on these trains would provide less protection than use of a swamper because:

a. The swamper can warn the motorman and pedestrians of impending hazards on the track, especially when the train goes around curves.

b. The trip light does not provide as much illumination as the cap lamp on the swamper's hard hat.

3. As an alternative to the use of trip lights, the petitioner proposes to:

a. Use a swamper in the next to the last car;

b. Instruct all personnel on this rule as spelled out in the company safety manual; and

c. Discipline personnel who fail to obey this rule.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 18, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-19035 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-82-C]

Black Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Black Diamond Coal Company, Inc., General Delivery, Tract City, Tennessee 37387 has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its No. 1 Mine located in Marion County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. The petition concerns the illumination of working places in the petitioner's mine while self-propelled mining equipment is operated in the working place.

2. Petitioner states that illumination systems would result in diminished safety because:

(a) Equipment operators and miners in the general area must adjust to changes in illumination.

(b) Extreme mining conditions introduce machine vibrations that result in frequent lighting failures.

(c) Low seam conditions require light fixture location on the sides of equipment. Miners working near equipment encounter glare.

3. For the above reasons, petitioner requests to use its self-propelled electric face equipment without lighting systems.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-19030 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-78-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh,

Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops and permanent pumps) to its McElroy Mine located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. In January 1980, the return air course of 1 South from 1 Left through 6 Left was changed into an effective bleeder system.

2. There is an electrical underground installation (7200 volt or 500 kw rectifier) near the 3 Left area along the 1 South track entry. The air current used to ventilate the rectifier is vented to the bleeder system, instead of into the return air course. This condition was cited by MSHA as a violation of 30 CFR 75.1105.

3. The nearest return airway is 2500 feet away from the rectifier.

4. As an alternative method, petitioner proposes to:

a. Totally enclose the rectifier in a fireproof structure;

b. Install in the rectifier station an automatic fire suppression device to be activated by heat sensors;

c. Provide openings for ventilation which will close from the same device that activates the fire suppression system;

d. Make the doors to the substation well sealed and self-closing;

e. Not store any combustible materials in the rectifier station;

f. Ensure that all electrical circuits will be in compliance with mandatory safety standards.

5. Petitioner states that the proposed alternative will provide the same measure of protection as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 17, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-19026 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-95-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

The Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery charging stations, substations, compressor stations, shops, and permanent pumps) to its Four States No. 20 Mine located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. The petition concerns ventilating an electrical installation (550 kw rectifier) with intake air rather than air coursed directly into the return.

2. The electrical installation in question is located along an older haulage ventilated with intake air. There are no return airways nearby.

3. The intake air passing this electrical installation doesn't go directly to an active working section.

4. As an alternative to the standard, petitioner will house electrical installation in a fireproof building, install heat sensors, fire suppression devices, and a closing steel door activated by a heat sensor.

5. Petitioner states this alternative achieves no less protection than the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 17, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-19025 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-80-C]

Golden Oak Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Golden Oak Mining Company, Inc., Suite Six J, Citizens Bank Square, Lexington, Kentucky 40507 has filed a petition to modify the application of 30 CFR 75.1710-1 (cabs and canopies) to its No. 1 Mine located in Letcher County,

Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. The mine's coal seam averages 48 inches in height, progresses towards thinner portions where the coal height decreases to 42 inches, and is steadily decreasing. The top is rolling.
2. Canopies on mobile electric face equipment hit the roof and could destroy roof support.
3. Canopies limit the equipment operator's visibility, and require the operator to sit in the deck in a position hazardous to the operator and other nearby miners, resulting in a diminution of safety.
4. The petitioner is unaware of any canopy modification safer than complete canopy removal.
5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 18, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-19033 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-98-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., Post Office Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Bessie, Nebo, and No. 3 Mines located in Jefferson County, Alabama, and its No. 4, No. 5, and No. 7 Mines located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

1. The ground check monitor circuit referred to in 30 CFR 75.902 opens the circuit breaker when either the ground check or pilot check wire breaks, thus assuring the maintenance of a continuous grounding circuit.
2. The petitioner requests permission to use a bare (non-insulated) copper

conductor, satisfying the requirements of 30 CFR 75.514, as a safety ground connector. This ground conductor shall be in addition to the grounding conductor required by 30 CFR 75.901 and shall be sized as required by 30 CFR 75.701-4.

3. This ground conductor shall be protected from physical damage by roof suspension, visible for its entire length, and provided with pressure connecting or crimped on lugs. Solder filled lugs shall not be used.

4. This ground conductor shall not exceed 100 feet in length and shall be equal in size to the power conductor. When power conductor is No. 6 A.W.G., this ground conductor shall be No. 6 A.W.G. or larger.

5. This ground conductor's connection point shall only be for that purpose.

6. The petitioner believes the alternative described better achieves the purpose sought by the standard, and guarantees no less protection than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Interested parties may inspect the petition at that address.

Dated: June 18, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-19031 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-45-C]

Sandy Fork Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sandy Fork Mining Company, Inc., Post Office Box 2309, Knoxville, Tennessee 37901 has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to numbers 5, 6, and 8 Mines located in Bill and Leslie Counties, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the illumination of working places in underground mines while self-propelled mining equipment is operated.
2. The petitioner states that illumination systems would diminish miner safety because equipment

operators would have difficulty adjusting to constant changes in illumination as they move about the mines; their vision would be impaired, posing a safety hazard to themselves and other miners.

3. The possibility of electrical hazards would increase by using illumination systems.

4. For these reasons, petitioner requests a modification of the application of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 18, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-19034 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-84-C]

Solar Fuel Co.; Petition for Modification of Application of Mandatory Safety Standard

Solar Fuel Company, P.O. Box 488, Somerset, Pennsylvania 15501 has filed a petition to modify the application of 30 CFR 75.316 (ventilation system and methane and dust control plan) to its numbers 5, 5A, 9 and 10 Mines located in Somerset County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. MSHA requires an operator to set out in printed form a ventilation system and methane and dust control plan, and submit such plan for approval every six months. These six-month intervals commence upon the operator's filing date.
2. Though MSHA might not approve the filing within six months, a new filing is required of the operator every six months.
3. Petitioner proposes that the review requirements apply at six-month intervals, beginning with the date of approval, rather than date of filing, of the most recent plan. This alternative procedure provides the same protection as the presently enforced procedure.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 18, 1980.

Frank A. White,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 80-19032 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs**[Prohibited Transaction Exemption 80-38]**

Exemption From the Prohibitions for Certain Transactions Involving the Yakima Orthopedic Clinic, Inc., P.S. Money Purchase Pension Plan and Trust and the Yakima Orthopedic Clinic, Inc., P.S. Profit Sharing Plan and Trust Located in Yakima, Wash. (Exemption Applications Nos. D-1634 and D-1635)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale of a parcel of real estate and the improvements thereon by the Yakima Orthopedic Clinic, Inc. P.S. Money Purchase Pension Plan and Trust and the Yakima Orthopedic Clinic, Inc. P.S. Profit Sharing Plan and Trust (collectively referred to as the Plans) to Dr. Jack C. Irwin, a party, in interest with respect to the Plans.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul R. Antsen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S., Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 11, 1980 notice was published in the Federal Register (45 FR 24944) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the sale of improved real property by the Plans to Dr. Jack C. Irwin. The notice

set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to interested persons in the manner set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact that the transaction is subject of an exemption affect the requirement of section 401(a) of the code that a plan must operate for the exclusive benefit of the employee of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative

exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of a parcel of real estate and the improvements thereon by the Plans for \$80,000 to Dr. Jack C. Irwin, provided that the sales price is not less than the fair market value of the real estate at the time of the sale.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 18th day of June, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 80-19037 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1858]

Proposed Exemption for Certain Transactions Involving the First Pennsylvania Savings Plan Located in Philadelphia, Pa.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income

Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed cash sale of certain mortgages by the First Pennsylvania Savings Plan (the Plan) to PENNAMCO, Inc. (PENNAMCO), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect PENNAMCO, the participants and beneficiaries of the Plan and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before August 4, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1858. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTAL INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by PENNAMCO, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons

are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined contribution, thrift profit sharing plan with approximately 156 participants. The Plan is maintained by the First Pennsylvania Corporation (FPC) and certain of its subsidiaries including PENNAMCO. First Pennsylvania Bank, N.A. (the Trustee) is the Trustee of the Plan. The Trustee, is a wholly owned subsidiary of FPC.

2. Effective October 1, 1952, the Board of Directors of the South Jersey Mortgage Company established a profit sharing plan for its eligible employees. In subsequent years, other corporations in the mortgage banking industry became affiliated with South Jersey Mortgage Company. As a result of these affiliations, a new corporation, Associated Mortgage Company (Associated), was established and it adopted a profit sharing plan for all eligible employees of the former companies.

3. Associated became a wholly owned subsidiary of FPC on November 12, 1969 and, on March 24, 1975, its name was changed to PENNAMCO. On January 1, 1976, PENNAMCO's profit sharing plan (the Profit Sharing Plan) was merged into the then FPC profit sharing plan (FPC Profit Sharing Plan). On January 1, 1979, FPC adopted the Plan and at that time transferred all of the assets from the FPC Profit Sharing Plan (including all assets attributable to the benefits of PENNAMCO's employees which had been separately accounted for under that plan) to the Plan. Despite the transfer, the separate accounting for the assets attributable to the benefits of the PENNAMCO employees of the PENNAMCO Profit Sharing Plan (maintained under the FPC Profit Sharing Plan) was continued.

4. Associated, prior to, and continuing after its acquisition by FPC, was in the business of servicing single-family dwelling mortgages. A portion of the assets of the Profit Sharing Plan were invested in residential mortgages (the Mortgages) and this continued to be the case after FPC's acquisition. Associated, at the time the Profit Sharing Plan invested in the Mortgages, agreed to service the Mortgages without charge to the Profit Sharing Plan and also made a verbal commitment to the Profit Sharing Plan that the Profit Sharing Plan would not suffer any losses through foreclosures or declining market values of the Mortgages. PENNAMCO, as the successor to Associated, believes itself to be so obligated.

5. A substantial portion of the assets of the Profit Sharing Plan are invested in

the Mortgages. As of December 31, 1979, the outstanding balance of the Mortgages (\$333,324) represented 68 percent of the total value of the prior Profit Sharing Plan assets. The actual fair market value of the Mortgages as of December 31, 1979 is represented by the applicant to be approximately \$237,392. The applicant has submitted a letter from the Central Mortgage Co., which is unrelated to FPC or the Plan, that represents "that since the Mortgages carry interest rates below current market rates that the fair market value of each Mortgage would be less than their outstanding balance thereof."

6. PENNAMCO has recently contracted to sell a substantial portion of its assets and, accordingly, its activities and work force will be significantly reduced in the near future. As a result, a number of current employees will be leaving its employ and substantial distributions from the Plan will be required. Because PENNAMCO agreed that its employee-participants would suffer no loss by reason of the investment in the Mortgages, PENNAMCO is requesting an exemption to allow it to purchase for cash the Mortgages from the Plan at their outstanding balance plus accrued interest to the date of the purchase.

7. In summary, the applicant represents that the proposed sale of the Mortgages will satisfy the statutory criteria of section 408(a) of the Act as follows: (1) The Trustee of the Plan represents that the proposed sale is in the best interest of the Plan; (2) the proposed sale will be a one time transaction for cash; (3) the Plan will incur no expenses or sales charges in the proposed sale; and (4) the Plan will be able to sell the Mortgages at a price in excess of their fair market value as determined by an independent representation.

Notice to Interested Persons

Within ten days of its publication in the *Federal Register*, a copy of the notice of pendency will be mailed or delivered in person to all active participants or beneficiaries of the Plan who are or were employed by PENNAMCO.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and

the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representatives set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by

section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of the Mortgages to PENNAMCO by the Plan at their outstanding balance plus accrued interest to the date of the sale provided that the price paid for the Mortgages is not less than the fair market value of the Mortgages at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 19th day of June, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-19038 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-29-M

Proposed Class Exemption To Permit Certain Loans of Securities by Employee Benefit Plans; Reopening of Comment Period

AGENCY: Department of Labor.

ACTION: Notice of reopening of comment period.

SUMMARY: The Department of Labor (the Department) is reopening the comment period on the proposed class exemption permitting certain loans of securities by employee benefit plans, set forth in the notice of the pendency before the Department of a proposed class exemption published in the *Federal Register* at 45 FR 24946 (April 11, 1980). This action is being taken in view of requests by certain members of the public that additional time to prepare comments be provided to them, and in view of the importance of the proposed class exemption.

DATE: The comment period is extended through July 9, 1980.

ADDRESS: Written comments on the proposed class exemption should be submitted, preferably in triplicate, to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Securities Lending.

FOR FURTHER INFORMATION CONTACT:

Jane A. Kanter, Esq., Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C-

4508, Washington, D.C. 20210, (202) 523-9594. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On April 11, 1980 the Department issued a notice of the pendency before the Department of a proposed class exemption from the restrictions of sections 406(a)(1)(A) through (D) of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by sections 4975 (a) and (b) of the Internal Revenue Code of 1954, as amended, and, in that notice, invited all interested persons to submit, on or before June 11, 1980, written data, views or arguments concerning the proposed class exemption. The proposed class exemption, if granted, will exempt the lending of securities by employee benefit plans to certain banks and broker-dealers, if the conditions of the proposed exemption are met. If granted, the proposed exemption would affect participants and beneficiaries of employee benefit plans, persons who manage the assets of such plans, and parties in interest who engage in securities lending transactions with such plans.

The Department has received requests from certain members of the public that the comment period in this matter be extended to July 9, 1980. The requesting parties state that they need additional time to prepare comments, and the Department believes that it is appropriate to grant such additional time. Accordingly, the Department has determined to reopen the comment period.

Notice of Reopening of Comment Period

Notice is hereby given that the period of time for the submission of public comments on the proposed class exemption to permit certain loans of securities by employee benefit plans set forth in the notice at 45 FR 24946 (April 11, 1980) is hereby reopened through July 9, 1980.

All interested persons are invited to submit written data, views or arguments concerning the class exemption proposed in the notice at 45 FR 24946 (April 11, 1980) on or before July 9, 1980.

These comments should be submitted, preferably in triplicate, to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4525, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20016, Attention: Securities Lending.

Signed at Washington, D.C., this 18th day of June, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-18823 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Meeting

The Twenty-Seventh meeting of the National Commission on Unemployment Compensation is scheduled to be held in the Ravensworth West Room of the Arlington Hyatt, Rosslyn, Virginia on June 28, 29, 30, 1980. The meeting will begin at 9:00 A.M. on Saturday, June 28, and conclude at 3:00 P.M. on Monday,

June 30. Anyone wanting the specific agenda should contact the Commission office.

Since the Commission has concluded its hearings, no testimony will be received at this meeting.

Telephone inquiries and communications concerning this meeting should be directed to: James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, 1815 N. Lynn Street, Room 440, Rosslyn, Virginia 22209, (703) 235-2782.

Signed at Washington, D.C., this 19th day of June 1980.

James M. Rosbrow,

Executive Director, National Commission on Unemployment Compensation.

[FR Doc. 80-19038 Filed 6-23-80; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H St., N.W., Washington, D.C.

Dated this day, June 16, 1980, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James R. Shea,

Director, Office of International Programs.

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Westinghouse Electric Co., Apr. 23, 1980, May 2, 1980, XR136		2 PWR's with thermal power level of 2,785 megawatts each, Taiwan nuclear units 7 and 8. Value: \$250,000,000.			Taiwan
Transnuclear, Inc., June 9, 1980, June 10, 1980, XSNM01689	4.0 pct enriched uranium.....	17,501.000	620.160	Reload fuel for ISAR (KKI) reactor.	West Germany.

[FR Doc. 80-18876 Filed 6-23-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on July 9, 1980 in room 1167, 1717 H St., NW, Washington, DC to continue its review of the NRC funding and program direction or program termination, as appropriate, for the annual ACRS reports to NRC and Congress. Notice of this meeting was published June 20.

In accordance with the procedures outlined in the Federal Register on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, July 9, 1980, 8:30 a.m. until the conclusion of business (approximately 12:00 noon).

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: June 19, 1980.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 80-18963 Filed 6-23-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Fire Protection; Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on July 9,

1980 in room 1167, 1717 H St., NW, Washington, DC to discuss a proposed fire protection rule for nuclear power facilities operating prior to January 1, 1979 (SECY-80-88). Notice of this meeting was published June 20.

In accordance with the procedures outlined in the Federal Register on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, July 9, 1980, 1:00 p.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be

considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Peter Tam (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: June 19, 1980.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 80-18964 Filed 6-23-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on the Sequoyah Nuclear Plant; Meeting

The ACRS Subcommittee on the Sequoyah Nuclear Plant will hold a meeting on July 9, 1980, in Room 1046, 1717 H St., NW, Washington, DC to review the Tennessee Valley Authority (TVA) request for a license to operate this plant. Notice of this meeting was published June 20, 1980.

In accordance with the procedures outlined in the Federal Register on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption 4.) To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, July 9, 1980, 8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, the Tennessee Valley Authority (TVA), their consultants, and other interested persons.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST or EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: June 18, 1980.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 80-18965 Filed 6-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-32]

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2); Issuance of Director's Decision Under 10 CFR 2.206

On September 14, 1979, a notice was published in the Federal Register that a petition by the Anti-Nuclear Group Representing York (ANGRY) was being considered under 10 CFR 2.206. ANGRY's petition requested that the Commission prepare an environmental impact statement concerning the venting of radioactive gases from the reactor building of the Three Mile Island Nuclear Station, Unit 2. Because this action will not cause any significant environmental impact, it has been determined not to prepare an environmental impact statement. Accordingly, ANGRY's petition is denied.

A copy of the formal decision denying the petition is available for inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 and in the local public document rooms at the State Library of Pennsylvania (Government Publications Section), Education

Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126 and the York College of Pennsylvania, Country Club Road, York, Pennsylvania 17405. A copy will also be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c) this decision will become the final action of the Commission twenty days after issuance unless the Commission elects to review the decision on its own motion within that time.

Dated at Bethesda, Maryland, this 13th day of June, 1980.

For the Nuclear Regulatory Commission.

Edson G. Case,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 80-18966 Filed 6-23-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Public Meeting To Outline and Discuss Proposed Guidelines and Procedures Regarding Rock Island Railroad and Employee Assistance Act and Milwaukee Railroad Restructuring Act

On Wednesday, June 25, 1980, at 10:00 a.m., the Federal Railroad Administration (FRA) will hold a meeting in Room 8334 of the Nassif Building, 400 7th Street, Southwest, Washington, D.C. to outline and discuss the proposed guidelines and procedures to be issued by the Department of Transportation (DOT), under which the public may submit applications for directed service under section 104 of the Rock Island Railroad Transition and Employee Assistance Act (Pub. L. 96-254) and section 18 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 916), and the proposed criteria which the Department will use to evaluate those applications.

The meeting is open to the public, including interested states and organizations who are considering applying for directed service under Pub. L. 96-254.

Issued in Washington, D.C., on June 20, 1980.

Michael T. Haley

Acting Chief Counsel.

[FR Doc. 80-19115 Filed 6-20-80; 2:58 pm]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Customs Service

(T.D. 80-173)

Customs Bonds; General Bond for Smelting and Refining Warehouses, Revised

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice informs proprietors of Customs bonded smelting and refining warehouses and their sureties of amendment of the General Bond for Smelting and Refining Warehouses. This bond relates to the entry, warehousing, smelting, and refining of imported metal bearing materials in bond without the payment of duty as provided in section 312, Tariff Act of 1930, as amended. The amendment is required to reflect statutory changes in the Customs laws made by the Customs Procedural Reform and Simplification Act of 1978 (Pub. L. 95-410), which became law on October 3, 1978.

EFFECTIVE DATE: The revised form of the bond is effective June 24, 1980.

FOR FURTHER INFORMATION CONTACT: William Lawlor, Drawback and Bonds Branch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, D.C. 20229 (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Section 312(a), Tariff Act of 1930, as amended, provides in part that any plant engaged in smelting or refining, or both, of metal-bearing materials as defined in that section may, upon the giving of satisfactory bond, be designated a bonded smelting or refining warehouse. Metal-bearing materials may be entered into a bonded smelting or refining warehouse without the payment of duties thereon and there smelted or refined, or both, together with metal-bearing materials of domestic or foreign origin. Section 623(b), Tariff Act of 1930, as amended, provides in part that whenever a bond is required or authorized by a law which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may prescribe the conditions and form of each bond. The form of the General Bond for smelting and refining Warehouses now prescribed is published in Treasury Decision 72-244, effective September 15, 1972.

The bond as now prescribed includes provisions and conditions relating to the

entry and warehousing of merchandise. The Customs Procedural Reform and Simplification Act of 1978 (Pub. L. 95-410, 92 Stat. 888, the "act") changed Customs entry procedures and extended the warehousing period.

Section 484(a), Tariff Act of 1930, as amended, formerly required that entry documents be filed at a customhouse within 5 working days after the entry of the importing vessel or aircraft, report of the vehicle, or arrival at the port of destination in the case of merchandise transported in bond, unless a longer time was authorized.

Section 102 of the act amended section 484(a) by providing that entry shall be made by filing that documentation necessary to enable Customs to determine whether the merchandise may be released from Customs custody. Section 102 also provides that documentation necessary to classify and appraise merchandise and to verify statistical information shall be filed at the time prescribed by regulation, either when entry is made or at any time within 10 working days thereafter.

Sections 557 and 559, Tariff Act of 1930, as amended, formerly permitted merchandise to be kept in a Customs bonded warehouse at the owner's expense for a period up to 3 years after arrival of the merchandise in the United States.

Section 108 of the act amends sections 557 and 559 to permit merchandise to remain in a Customs bonded warehouse at the owner's expense for a period up to 5 years. Merchandise in a bonded warehouse on October 3, 1978, the date of enactment of Pub. L. 95-410, may remain in the warehouse for a period up to 5 years from that date.

A complete text of the bond form, as revised, is set forth below.

Action

The revised form of the General Bond for Smelting and Refining Warehouses, as set forth below, is effective June 24, 1980. However, to minimize any possible inconvenience to the public, the bond format prescribed in Treasury Decision 72-244, with the attachment of Customs bond rider "R" will be accepted for a period of 60 days from the date of publication of the revised form in the Federal Register.

Inapplicability of Public Notice and Delayed Effective Date Provisions

This is a technical amendment of interest to an extremely small segment of the public. Since it merely implements a statutory requirement, relieves the proprietor of modifying the existing bond form and submitting bond rider

"R", notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C.(d)(1), a delayed effective date is not required because this amendment relieves a restriction.

Drafting Information

The author of this document is William Lawlor, Carriers, Drawback and Bonds Division, Office of Regulations and Rulings, U.S. Customs Service.

Dated: June 17, 1980.

R. E. Chasen,

Commissioner of Customs.

U.S. Customs Service

General Bond for Smelting and Refining Warehouses

Know all men by these presents, That _____, of _____, as principal, and _____ of _____, and _____, of _____, as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of _____ dollars (\$_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this _____ day of _____, 19____.

Whereas, the said _____ have (has) been authorized to smelt or refine, or both, imported metal bearing materials in bond without the payment of duty thereon, as provided in section 312, Tariff Act of 1930, as amended, in the premises situated at _____, and more particularly described by metes and bounds in exhibit _____, attached hereto and made a part hereof, which premises are owned, controlled and operated by _____; and

Whereas, metal-bearing materials will be entered for warehouse to be smelted or refined, or both; and

Whereas, metal-bearing materials as well as merchandise generally will be entered for consumption or for warehouse, and in warehouses of Classes 2, 3, or 4 at any of the following ports of entry _____

_____ and _____

Whereas, certain merchandise, in whole or in part, may be entered under the provisions of section 484, Tariff Act of 1930, as amended, and duties deposited under the provisions of section 505(a), Tariff Act of 1930, as amended; and

Whereas, pursuant to the regulations promulgated under section 448(b), Tariff Act of 1930, the said principal may find that immediate delivery of the merchandise will be necessary and desires the release of such merchandise prior to the making of formal entry therefor and payment of duties thereon the description of the articles to be fully set forth in such applications for special permits as may be filed by the principal; and

Whereas, imported merchandise generally and dutiable metal-bearing materials (including products partly smelted or refined) will, to the extent permitted by law and regulations and in accordance therewith, be transferred from one warehouse to another, or be withdrawn for consumption, for transportation and rewarehousing, for exportation, for transportation and exportation, or for any other purpose provided for by law and regulations, as shown in the required documents.

Whereas, the above-bounden principal may request that the merchandise be examined elsewhere than at the public store, wharf, or other place in charge of a custom officer;

Now, therefore, the condition of this obligation is such, that—(1) If the said principal shall comply in all respects with the provisions of section 312, Tariff Act of 1930, as amended, and the regulations thereunder, and all other laws and regulations, relating to the importation, transportation, exportation, transportation and exportation, entry, transfer, warehousing, or rewarehousing of imported metal-bearing materials entered for smelting or refining, or both, and to the custody and safekeeping of an accounting for such metal-bearing materials and dutiable metal (including products partly smelted or refined); and shall exonerate and hold harmless the United States and its officers from or on account of any risk, loss, or expense of any kind or description connected with or arising from the deposit of metal-bearing materials or dutiable metal (including products partly smelted or refined) in the above-described warehouse(s), including the expenses of any kind or description incident to or caused by the transfer of such merchandise from the said warehouse(s) upon the discontinuance thereof;

(2)(a) If, where entry is made pursuant to section 484, Tariff Act of 1930, as amended, the above-bounden principal, within the time prescribed in the Customs regulations shall file with the appropriate Customs Officer the documentation required by the Customs regulations to enable Customs to (1) determine whether the merchandise may be released from customs custody,

(2) properly assess duties on the merchandise, (3) collect accurate statistics with respect to the merchandise, and (4) determine whether applicable requirements of law or regulation are met; and if the above-bounden principal, within the time prescribed in the Customs regulations, shall deposit the duties and taxes imposed upon or by reason of importation estimated to be due thereon; or if, in the event of failure to file the documentation or to deposit duties and taxes, he shall pay to the district director of customs as liquidated damages an amount equal to the value of the merchandise as to which there shall have been default, plus the duties and taxes thereon (it being understood and agreed that the amount to be collected shall be based upon the quantity and value of the merchandise as determined by the district director, and that the decision of the district director as to the status of the merchandise, whether free or dutiable, together with the rate and amount of duties and taxes, also shall be binding on all parties to this obligation);

(2)(b) If, in cases where the merchandise has been released prior to entry pursuant to section 448(b) of the Tariff Act of 1930, the above-bounden principal within the time prescribed by the Customs Regulations, after the release of the articles described in the application for a special permit, shall make entry for such articles and deposit the duties and taxes imposed upon or by reason of importation estimated to be due thereon, or in case the merchandise is to entered for warehouse file the usual warehouse entry, or if, in the event of failure to make entry or to deposit such duties and taxes, he shall pay to the district director of customs as liquidated damages an amount equal to the value of the merchandise plus the duties and taxes thereon (it being understood and agreed that the amount to be collected shall be based upon the quantity and value of such merchandise as determined by the district director of customs and that the decision of the district director of customs as to the status of such merchandise, whether free or dutiable, together with the rate and amount of duties and taxes, also shall be binding on all parties to this obligation);

(3) And if the above-bounden principal shall, when the merchandise is to be examined elsewhere than at the public stores, wharf, or other place in charge of a customs officer, pay any additional expense, including actual expenses of travel and subsistence, but not the salary of the examining officer,

and shall hold such merchandise at the place to which it will be removed for examination until the merchandise shall have been released from customs custody by the completion of final examination for purposes of appraisement; and, at any time before such release, shall transfer the merchandise to such place as the district director of customs may direct; and, when the merchandise has been corded and sealed, shall keep such cords and seals intact until removed by customs officers; or, in the event of default, shall pay to the district director of customs an amount equal to the value of the merchandise with respect to which there has been a default (as set forth in the entries therefor), plus the estimated duties and taxes thereon, as determined at the time of entry;

(4) If said principal shall pay monthly to the district director of customs for the district in which said smelting, refining, or smelting and refining warehouses are located, the compensation of customs officers on duty at or assigned to such warehouses, including overtime compensation of customs officers and employees assigned to duty at night or on Sunday or holiday upon a request made by or on behalf of the principal hereon; and

(5) If the said principal shall deliver to the said district director such invoices, declarations of owners or cosigned, certificates of origin, certificates of exportation, and other declarations, certificates and documents as may be required by law or regulations in connection with the entry or withdrawal of imported merchandise or the withdrawal of dutiable metal (including products partly smelted or refined), in the form and within the time required by law or regulations, or any lawful extension thereof, or, in default thereof, shall pay to the district director of customs such amounts as liquidated damages as may be demanded by him in accordance with the laws and regulations; and

(6) If the said principal shall redeliver or cause to be redelivered to the order of the district director of customs on demand by him, in accordance with the laws and regulations in effect on the date of the release of the said articles, any and all merchandise found not to comply with the law and regulations governing its admission into the commerce of the United States; and shall redeliver or cause to be redelivered to the order of the district director of customs such additional packages or quantities of merchandise as may be desired by customs pursuant to section 499, Tariff Act of 1930, as

amended, for the purpose of examination, inspection, or appraisal, upon a demand made on such principal within the time prescribed by the Customs Regulations, and shall on demand made within the time prescribed by the Customs Regulations redeliver or cause to be redelivered to the order of the district director of customs any of such merchandise for the purpose of marking pursuant to the provisions of section 304, Tariff Act of 1930, as amended; or, in default thereof, shall pay to said district director such amount as liquidated damages as may be demanded by him in accordance with the law and regulations not exceeding the amount of this obligation, for any breach or breaches thereof;

(7) If the said principal shall not receive into such warehouse(s) any merchandise entered for warehouse or rewarehouse therein without a proper permit from the district director of customs and without the presence of the customs officer in charge, and shall not remove or suffer to be removed any such merchandise or dutiable metal (including products partly smelted or refined) not in excess of that charged against open bonds, except in the manner provided for by law and regulations; or, in default thereof, shall pay to the district director of customs on demand all duties, taxes, charges, and exactions found legally due on the merchandise or dutiable metal (including products partly smelted or refined) so removed it being expressly understood and agreed that the liability of said principal under the bond shall extend to all cases where the merchandise or dutiable metal (including products partly smelted or refined) are lost or stolen from said warehouse(s), whether the loss or theft shall result from the fault of said principal or not; and

(8) If the said principal shall pay to the district director of customs, when demanded, all duties, taxes, and charges found legally due and unpaid on the final liquidation of such consumption entries as may be charged against this obligation; and if within five years from October 3, 1978, or five years from the date of original importation, whichever is later the said principal shall pay to the district director of customs the full amount of duties, taxes, charges, and exactions legally due upon all merchandise and dutiable metal withdrawn from warehouse for domestic consumption, and shall pay, on demand by the district director, any other duties, taxes, charges, and exactions found legally due on the merchandise or

dutiable metal (including products partly smelted or refined) after withdrawal, or found to be due on merchandise or dutiable metal (including products partly smelted or refined) remaining in warehouse after expiration of such five year period; and

(9) If the said principal shall properly and lawfully enter or withdraw the merchandise or dutiable metal (including products partly smelted or refined) covered by this obligation, for bona fide exportation or for transportation, or for transportation and exportation, and shall actually furnish the district director of customs with proof that such merchandise, if entered for exportation, was exported through a customs port of exit under customs supervision and landed beyond the limits of the United States, or, if entered or withdrawn for transportation to another customs port, was delivered to the district director of customs at the port of destination and there properly entered, the proof to be filed in the form and within the time required by law and regulations, or any lawful extension thereof, or, in lieu of exportation, if the merchandise or dutiable metal (including products partly smelted or refined) shall be destroyed or abandoned within the bonded period in accordance with law and regulations, or, in default of the foregoing conditions, if the obligors shall pay to the district director of customs the full amount of duties, taxes, charges, and exactions which may be found legally due on such of the merchandise as to which there shall have been default;

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of _____

(Name) _____

(Address) _____

(Name) _____

(Address) _____

(Principal)(Seal) _____

(Name) _____

(Address) _____

(Name) _____

(Address) _____

(Surety)(Seal) _____

(Name) _____

(Address) _____

(Name) _____

(Address) _____

(Surety)(Seal) _____

[FR Doc. 80-18998 Filed 6-23-80, 8:45 am]

BILLING CODE 4810-22-M

Sunshine Act Meetings

Federal Register

Vol. 45, No. 123

Tuesday, June 24, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Chrysler Corporation Loan Guarantee Board	1
Federal Communication's	2, 3, 4
Federal Energy Regulatory Commission	5
International Trade Commission	6
National Transportation Safety Board ..	7
Nuclear Regulatory Commission	8
Parole Commission	9
Postal Rate Commission	10
Postal Service	11

1

CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

TIME AND DATE: 9:30 a.m., June 24, 1980. The meeting may be adjourned until later in the day or adjourned from day to day as events require.

PLACE: Room 4121, Treasury Department, 15th and Pennsylvania Avenue NW., Washington, D.C. 20220.

MATTERS TO BE DISCUSSED: The Board has received an application from the Chrysler Corporation for the issuance of guarantees under the Chrysler Corporation Loan Guarantee Act (Pub. L. 96-185) (the "Act"). The Board will consider whether the Chrysler Corporation has satisfied the conditions and requirements for such Federal Assistance, as set forth in the Board's Resolutions of May 10, 1980 and the Act.

OPEN OR CLOSED: Open.

CONTACT PERSON FOR MORE

INFORMATION: Brian M. Freeman, Secretary of the Board (202) 566-5888.

This notice is given as a result of Court Order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: June 19, 1980.

Brian M. Freeman,
Secretary of the Board.

[S-1212-80 Filed 6-19-80; 4:35 pm]

BILLING CODE 4810-27-M

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, June 25, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission meeting following the open meeting which commences at 9:30 a.m.

MATTERS TO BE CONSIDERED:

Agenda, Item Number and Subject

General—1—Establishment of the Position of Associate Bureau Chief for operations, Private Radio Bureau.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: June 19, 1980.

[S-1213-80 Filed 6-20-80; 9:52 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION. PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Wednesday, June 25, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: Deletion of an item.

Agenda, Item Number, and Subject

General—4—*Title:* Petition for Rule making asking that the Commission adopt a predesignation procedure prior to Commission consideration of an investigatory report. *Summary:* Proposed Procedure would make investigatory report, witness statements, and staff recommendation available to the broadcast licensee under investigation prior to Commission consideration.

Additional information concerning this item may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: June 19, 1980.

[S-1214-80 Filed 6-20-80; 9:53 am]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, June 25, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item Number, and Subject

General—1—*Title:* Notice of Proposed Rule making governing construction of limitations on employees' ownership of securities in Section 4(b) of the Communications Act. *Summary:* Rule making proposes new construction of 4(b) applicability to employees and their immediate families.

General—2—*Title:* Applications of Carlos Campos and Javier Navarro for Commercial Operator's licenses. *Summary:* The Commission will consider the request for review filed by Carlos Campos and Javier Navarro of an action taken by the Field Operations Bureau, denying evidentiary hearing on the issue of whether alien applicants are eligible for the class of license for which they applied. The request for the hearing had been denied by Field Operations Bureau on the ground that there are no facts or issues in dispute and the hearing would serve no useful purpose.

General—3—Renewal of the National Industry Advisory Committee (NIAC). The NIAC charter expires on July 26, 1980, and it must be renewed if the advisory committee is to continue. The NIAC submits recommendations for emergency communications plans, policies, systems, and procedures for all FCC licensed and regulated services covering emergency situations posing a threat to life and property.

General—4—*Title:* Petition for Rule making asking that the Commission adopt a predesignation procedure prior to Commission consideration of an investigatory report. *Summary:* Proposed Procedure would make investigatory report, witness statements, and staff recommendation available to the broadcast licensee under investigation prior to Commission consideration.

General—5—OPP's request for funding approval of part of FCC's fiscal year 1981 Contract Research Budget for policy research projects.

General—6—*Title:* Amendment of Parts 81 and 83 of the Commission's rules to implement the provisions of Chapter 4 of the 1974 Safety Convention pertaining to radio equipment required on compulsorily fitted vessels. *Summary:* The FCC will consider whether to adopt a Report and Order implementing the 1974 Safety of Life at Sea (SOLAS) Convention and regulations governing vessels subject to the Communications Act of 1934, as amended. These regulations will bring U.S. vessels into compliance with the 1974 SOLAS Convention and improve the safety of U.S. vessels operating in national and international waters.

Common Carrier—1—Title: Final Report and Order in Docket No. 18920, in the matter of establishment of policies and procedures for consideration of applications to provide specialized common carrier services in the Domestic Public Point-to-Point Microwave Radio Service and proposed amendments to Parts 21, 43, and 61 of the Commission's Rules. *Summary:* The Commission will consider the sole issue yet to be resolved in this proceeding, whether it should adopt standard terminology to be used by carriers in any tariff statements of quality and reliability factors or performance parameters to be observed by carriers engaged in providing such services.

Common Carrier—2—Title: Amendment of § 22.521(b) of the Commission's rules, to include Tallahassee, Florida, in the table of assignments for air-ground stations in the Domestic Public Land Mobile Radio Service. *Summary:* Commission will consider a proposed amendment to § 22.521(b) of the Commission's rules, assigning Channel 6 (base station frequency, 454.700 MHz; mobile and test station frequency, 459.700 (MHz) to Tallahassee, Florida.

Common Carrier—3—Title: Standard Telephone Company, petition for reconsideration of a condition in its Order and Certificate to construct and operate a CATV system. *Summary:* The Commission will consider in this matter whether to amend or delete from Petitioner's Order and Certificate, the condition that the grant is subject to the outcome of Common Carrier Docket No. 78-72, "In the Matter of MTS and WATS Market Structure."

Common Carrier—4—Title: Petition of the Western Union Telegraph Company for Stay Pending Judicial Review of the Commission's Policy Statement and Order in Docket No. 19660. *Summary:* This item considers the petition for stay pending judicial review of the Commission's Policy Statement and Order in Docket No. 19660 (Gateways). The issue is whether Western Union has made the showing necessary to warrant a stay under the existing case law.

Common Carrier—5—Title: Petition of Microband Pacific Corporation for Stay of Commission's Memorandum Opinion and Order. FCC 80-139. *Summary:* Microband Pacific requests the Commission stay its Order authorizing R. L. Mohr to construct a new MDS station at San Pedro, California. Microband Pacific argues that unless the Commission issues the stay as requested it will suffer irreparable financial harm.

Common Carrier—6—Title: Formal complaints against RCA American Communications, Inc. filed by Spanish International Network, Inc. (File No. TS 10-79), Eastern Microwave, Inc. (File No. TS 4-80), Cable News Network (File No. E 80-13) and National Christian Network (File No. E 80-15). *Summary:* The complaints raise questions concerning RCA Americom's practices in assigning transponders on its domestic satellite system to cable program suppliers. The issues include alleged violations of Sections 201-203 and 214 of the Communications Act and alleged inconsistencies with the Commission's open entry and competitive policies.

Common Carrier—7—Title: Petitions, filed by Home Box Office, Eastern Microwave, Inc., and Spanish International Network, seeking to reject or suspend and investigate RCA Americom's tariff proposal to conduct a lottery to allocate remaining transponders on the SATCOM F-III replacement satellite. *Summary:* The Commission will consider several petitions opposing RCA Americom's tariff proposal to conduct a lottery to allocate remaining transponders on the SATCOM F-III replacement satellite. The petitioners allege that the lottery proposal is an unreasonable practice within the meaning of Section 201(b) and unlawfully discriminatory, in violation of Section 202(a) of the Act.

Common Carrier—8—Title: Petitions to suspend or reject revisions to AT&T's Bell System Operating Companies Tariff FCC No. 8, Exchange Network Facilities for Interstate Access (ENFIA). *Summary:* The Commission will consider whether to grant petitions from MCI Telecommunications Corporation, Southern Pacific Communications Corporations, U.S. Telephone Communications, Inc., and United States Transmission Systems, Inc. to suspend or reject proposed increases to the AT&T ENFIA tariff now scheduled to take effect on July 1, 1980.

Common Carrier—9—Title: Memorandum Opinion and Order considering a Petition to Reject or Suspend and Investigate Lincoln Telephone and Telegraph Company Tariff FCC No. 1, establishing facilities for interstate access offered to other common carriers. *Summary:* The above mentioned tariff was filed in order to allow other common carriers to provide MTS/WATS-type services in the publishing carrier's service area. The question before the Commission is whether it should reject or suspend the tariff for lack of sufficient justification.

Common Carrier—10—Title: Manual and Procedures for the Allocation of Costs. *Summary:* This order initiates a rulemaking proceeding to prescribe a manual containing procedures to be followed by AT&T in allocating costs. This docket was established through issuance of a Notice of Inquiry in September, 1979 (73 FCC 2d 629).

Assignment and Transfer—1—Title: Applications to assign the licenses of stations WJAR, Providence, Rhode Island, WHIM, Providence, Rhode Island and WRLM(FM), Taunton, Massachusetts and three informal objection thereto. *Summary:* Franks Broadcasting Co. seeks to acquire the license of WRLM(FM) which it proposes to exchange for the license of WJAR which is licensed to the Outlet Co. Since the Outlet Co. is also the licensee of WJAR-TV, Providence, it also the licensee of WJAR-TV, Providence, it has requested waiver of the Commission's FM one-to-a-market rule. Franks Broadcasting also proposes to assign the license of WHIM to minority-controlled East Providence Broadcasting and has requested issuance of a tax certificate pursuant to the Commission's Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).

Renewal—1—Title: EEO Goals and Timetables. *Summary:* Agend item asking

the Commission to accept the goals and timetables submitted by Station WSTU, Stuart, Florida and for the attached letter to be sent informing the licensee of the Commission's action.

Renewal—2—Title: Peoria Community Broadcasters, Inc. (WWCT(FM)) application for renewal of license and assignment to Chan Broadcasting Co., Inc.; Central Illinois Broadcasting Co. petition to deny Peoria's renewal application and mutually exclusive application for construction permit for WWCT(FM)'s frequency. *Summary:* Peoria, bankrupt and operating the station as debtor in possession, seeks renewal of its license and approval of assignment to Chan. Central, mutually exclusive applicant for that frequency, filed a petition to deny Peoria's renewal application alleging unauthorized transfer of control and lack of candor in Peoria's Ownership Reports. Peoria alleges that Central lacks financial qualifications, filed an incomplete application in that it lacked a transmitter site, has withheld for its own advantage information which should have been disclosed to the Commission and has made misrepresentations to the Commission. The issues before the Commission are whether a substantial and material question of fact has been raised concerning Peoria's renewal, whether Central possesses the qualifications to be a Commission licensee, and which of the applicants on a comparative basis would better serve the public interest.

Aural—1—Title: Application of Dick Lashbrook Corporation (WSIV-FM), Pekin, Illinois for a construction permit for modification of facilities. *Summary:* The FCC is considering WSIV-FM's request for a waiver of the Commission's minimum spacing requirements for FM stations. WRKX is the station with which WSIV-FM would be short-spaced, and it has petitioned the Commission to deny WSIV-FM's request.

Aural—2—Title: Memorandum Opinion and Order in re application of Ettlinger Broadcasting Corporation (File No. BPH-10,075) for a construction permit for a new FM station at Westmoreland, California and a petition for waiver of § 73.315(a) of the rules filed by applicant. *Summary:* The FCC considers the above application for a new station and applicant's petition for waiver of §§ 73.315(a) of the rules, pertaining to city coverage.

Television—1—Title: Application (BPCT-780720IC) for construction permit for a new commercial television station to operate on channel 27, Marion, Illinois, filed by Dennis F. Doelitzsch. *Summary:* UHF applicant is a licensee and owner of an AM and an FM station in the same market. The Grade A contour of the proposed station would encompass his aural facilities' communities of license, therefore, a one-to-a-market problem is raised. The issue before the Commission is whether the applicant has made a sufficient showing to justify Commission action under Note 8 to § 73.636 (one-to-a-market rule).

Television—2—Title: Applications to construct four new TV translator stations

(file Nos. BPTT-3617, 3626, 3627 and 780911A) filed by U.P. TV Systems, Inc., are the subject of Petitions to Deny filed by Teleprompter. **Summary:** The Petitions raised questions regarding (a) use of the translators to relay the TV signals to fixed points as a substitute for common carrier in violation of § 74.731(c) of our rules; (b) concentration of control and multiple ownership questions; and (c) and the signal interference potential with respect to the channel 53 application.

Broadcast—1—Title: Request for Waiver of Section 74.402 of our Rules to allow Splitting of Remote Pickup N1 channels in the 450/455 MHz Band in Southern California. The Southern California Frequency Coordinating Committee has asked for waiver of Section 74.402 to allow the splitting of N1 remote pickup channels to alleviate congestion in the 450/455 MHz band in the Southern California area.

Broadcast—2—Title: Petition to Institute Inquiry into Various Aspects of Broadcasting (RM-3131). **Summary:** This cast involves action on a petition filed by R. P. Haviland urging the institution of an inquiry into a range of broadcast issues. The petition asks the Commission to begin an inquiry that would eventually lead to rule making and the adoption of rules, as well as to the making of recommendations to the Congress on statutory changes. Among the points which the petitioner urges the Commission to consider are: (1) The geographic distribution of radio service and the relative importance of local service versus area coverage; (2) the economic realities affecting program production; (3) techniques which could be employed to increase program choice and at the same time ensure the continued economic viability of broadcasting and networking; (4) correction of advertising "abuses;" and (5) improvement in program content on TV and radio.

Broadcast—3—Title: Memorandum Opinion and Order regarding NAB's petition for reconsideration of the Commission's revised EEO processing guidelines for broadcast renewal applicants, FCC 80-61, and NAB's petition for rule making to reassess the Commission's EEO regulatory program (RM-3635). **Summary:** The Commission will consider the petitions for reconsideration of its EEO processing guidelines, adopted February 13, 1980, and a related petition for rule making, both filed by the National Association of Broadcasters.

Complaints and Compliance—1—Title: Application by Hale Broadcasting Corporation licensee of Station WMTS, Murfreesboro, Tennessee, for review of Broadcast Bureau's action assessing a forfeiture for operation during unauthorized times. **Summary:** Hale Broadcasting Corporation, licensee of Station WMTS, Murfreesboro, Tennessee has requested the Commission to review the order of the Broadcast Bureau assessing a forfeiture of \$2,000 for the operation of the station thirty minutes prior to the time authorized on sixteen days. Hale Broadcasting contends that the imposition of such a severe penalty in this case is inconsistent with the

legislative intent of the Communications Act. The licensee argues that the Broadcast Bureau erroneously applied the "willfully or repeatedly" standard of liability, in that the violations consisted of a single, honest, harmless error which was promptly corrected. The Commission must decide whether to grant the application for review and if so, whether the forfeiture should be remitted or reduced.

Complaints and Compliance—2—Title: Fairness Doctrine Complaint against ABC, NBC and CBS, filed November 13, 1979 by Media Access Project (MAP) on behalf of the National Committee for Responsive Philanthropy (NCRP). **Summary:** The Commission will consider whether to grant or deny a Fairness Doctrine complaint filed by the National Committee for Responsive Philanthropy. The complaint alleges that NBC, CBS and ABC have presented a series of United Way public service announcements which address one side of a controversial issue of public importance (whether the United Way's method of collecting and distributing funds serves all elements of society), but have not presented the opposing view. The networks all claim that the announcements do not meaningfully address the issue in question. NBC and CBS state that issue as defined by the complainants would not be a controversial issue of public importance even if it had been meaningfully addressed.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: June 19, 1980.

[S-1215-80 Filed 6-20-80 9:45 am]

BILLING CODE 6712-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published June 23, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., June 25, 1980.

CHANGE IN THE MEETING: The following items have been added:

Item Number, Docket Number, and Company

M-7—RM80-11, Statement of Policy on Distributor Access to Outer Continental Shelf Gas.

RP-2—RP75-106 (Appalachian Production), Columbia Gas Transmission Corp.

Louis D. Cashell,

Acting Secretary.

[S-1219-80 Filed 6-20-80; 1:11 pm]

BILLING CODE 6450-85-M

6

[USITC SE-80-35A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 41112, June 17, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, June 26, 1980.

CHANGES IN THE MEETING: Emergency action to close the meeting originally announced as open to the public.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and in conformity with 19 CFR 201.36(b)(4), Commissioners Alberger, Calhoun, Moore, Bedell, and Stern voted by action jacket SE-80-13 to hold the discussion with respect to item No. 1 [Steel jacks (Inv. 603-TA-6)—briefing] in closed session.

Commissioners Alberger, Calhoun, Moore, Bedell, and Stern also determined, pursuant to 19 CFR 201.37(b) that Commission business requires the change in the determination of the Commission to open or close this portion of the meeting and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

S-?

BILLING CODE 7020-02-M

7

[USITC SE-80-36]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, July 1, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20438.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Steel jacks (Inv. 603-TA-6)—vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1216-80 Filed 6-20-80; 10:55 am]

BILLING CODE 7020-02-M

8

[NM-80-24]

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 41113, June 17, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, June 24, 1980.

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: The first two items will be open to the public; the third item will be closed under Exemption 9B of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report*—Crane Barge C. L. DILL 10, Fire, Garden Island Bay, Mississippi River Delta, June 5, 1979, and *Recommendations* to U.S. Army Corps of Engineers, Texaco, Inc., and the C. L. Dill Co.
2. *Special Investigation Report*—Design-induced Landing Gear Retraction Accidents in Beechcraft Baron, Bonanza, and Other Light Aircraft and *Recommendations* to the Federal Aviation Administration.
3. *Discussion* of Board strategy for public hearing on rail rapid transit safety which will be held on July 28 and 29, 1980.

CONTACT PERSON FOR MORE

INFORMATION: Sharon Flemming, 202-472-6022.

June 20, 1980.

[S-1222-80 Filed 6-20-80; 4:02 pm]

BILLING CODE 4910-58-M

9**NUCLEAR REGULATORY COMMISSION.**

DATES: June 24 and 26, 1980.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Tuesday, June 24:

10 a.m.

1. Discussion of Hearing Board Report on Clearance Rule (approximately 1 hour, public meeting) (rescheduled from June 26) (replaces interim hydrogen control, which moves to June 26).

Thursday, June 26:

9:30 a.m.

1. Meeting with Representatives of the Conference of Radiation Control Program Directors Regarding the Agreement States Program (approximately 6 hours, public meeting).
2. Affirmation Session (approximately 10 minutes, public meeting).
 - a. Proposed Rulemaking on reactor Siting (tentative).
 - b. Petition for an Atomic Energy Act Section 105c(2) (Significant Changes).
 - c. Amendments Generally Extending Time for Commission Action.
 - d. NRDC Request for Hearing in Erwin (tentative).

3. Time Reserved for Discussion and Vote on Affirmation Items (if required) (approximately 15 minutes, public meeting).

1:30 p.m.

1. Briefing on Recommendations of Indian Point Task Force (approximately 2 hours, public meeting).
2. Discussion of Proposed Interim Hydrogen Control Requirements for Small Containments (approximately 6 hours, public meeting).

CONTACT PERSON FOR MORE

INFORMATION: Walter Magee, (202) 634-1410.

AUTOMATIC TELEPHONE ANSWERING

SERVICE FOR SCHEDULE UPDATE: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Roger M. Tweed,
Office of the Secretary.

June 19, 1980.

[S-1220-80 Filed 6-20-80; 3:16 pm]

BILLING CODE 7590-01-M

10**PAROLE COMMISSION.**

[OP0401]

National Commissioners (the Commissioners presently maintaining Offices at Washington, D.C. Headquarters).

TIME AND DATE: June 18, 1980, at 9:30 a.m.

PLACE: Room 826A, 320 First Street NW, Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

CHANGES IN THE MEETING: On June 17, 1980, the Commission determined that the above meeting be continued to 9:30 a.m. on Wednesday, June 25, 1980, in Room 826A, 320 First Street, NW, for consideration of case referrals from Regional Commissioners. The above change is being announced at the earliest practicable time.

CONTACT PERSONS FOR MORE

INFORMATION: Linda Wines Marble, Analyst (202) 724-3094.

[S-1218-80 Filed 6-20-80; 12:57 pm]

BILLING CODE 4410-01-M

11**POSTAL RATE COMMISSION.**

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 39612, June 11, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF OPEN MEETING: 2 p.m., June 26, 1980.

CHANGES IN THE MEETING: Addition of the following agenda item.

1. Motion of United Parcel Service to Compel Answers in Docket R80-1.

The portion of the meeting to consider agenda item No. 1 above will be closed to the public pursuant to 5 U.S.C. § 552b (c)(10). The portion of the meeting to consider agenda item No. 2, Election of the Vice Chairman, will be open to the public.

CONTACT PERSON FOR MORE

INFORMATION: Dennis Watson, Information Officer, telephone (202) 254-3880.

[S-1221-80 Filed 6-20-80; 3:20 pm]

BILLING CODE 7715-01-M

12**POSTAL SERVICE.**

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 3 p.m. on Monday, June 30, and at 9 a.m. on Tuesday, July 1, 1980, at Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. Except as indicated in the following paragraphs, the meetings are open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

On June 3, 1980, the Board of Governors voted to close to public observation its next meeting, scheduled for 3:00 P.M. on June 30, 1980. Each of the members of the Board voted in favor of closing this meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Allen, Camp, Ching, and Sullivan; Postmaster General Bolger; and Secretary of the Board Cox.

A portion of the meeting to be closed will consist of a continuation of the discussion by the Governors of the Opinion and Recommended Decision Upon Reconsideration of the Postal Rate Commission re Electronic Mail Classification Proposal, 1978 (Commission Docket No. MC78-3), dated April 8, 1980.

A second portion of the meeting to be closed is to involve a discussion of the possible appointment of a new Deputy Postmaster General.

A third portion of the meeting to be closed is to involve a discussion of individuals in connection with a possible decision to engage independent staff assistance for the Governors.

Agenda

Monday Afternoon Session

1. Recommended Decision upon
Reconsideration of the Electronic Mail
Classification Proposal, 1978
(Commission Docket No. MC78-3)
(The Governors will continue consideration
of the above Recommended Decision of
the Postal Rate Commission. As stated
above in the Notice of Meeting, the part
of the meeting that will be devoted to
this matter will be closed to the public.)
2. Discussion of the possible appointment of a
new Deputy Postmaster General.
(The Governors and the Postmaster
General will discuss possible
appointment of a new Deputy Postmaster
General. As stated above in the Notice of
Meeting, the part of the meeting that will
be devoted to this matter will be closed
to the public.)
3. Discussion of individuals in connection
with a possible decision to engage
independent staff assistance for the
Governors.
(The Board will discuss the possibility of
engaging independent staff assistance for
the Governors. As stated above in the
Notice of Meeting, the part of the meeting
that will be devoted to this matter will be
closed to the public.)

Tuesday Session

1. Minutes of the previous meeting.
2. Remarks of the Postmaster General
(In keeping with its consistent practice, the
Board's agenda provides this opportunity
for the Postmaster General to inform the
members of miscellaneous current
developments concerning the Postal
Service. He might report, for example,
the appointment or assignment of a key
official, or the effect on postal operations
of unusual weather or a major strike in
the transportation industry. Nothing that
requires a decision by the Board is
brought up under this item.)
3. Report on Operations Group Programs
(Mr. Benson, Senior Assistant Postmaster
General, Operations Group, will brief the
Board on Programs in the Operations
Group.)
4. Report of the Regional Postmaster General
(Mr. Doran, Regional Postmaster General,
will report on postal conditions in the
Central Region.)
5. Report on the Status of the General Rate
Proceeding pending before the Postal
Rate Commission (Commission Docket
No. R80-1)
(Assistant General Counsel Frances Beck
will brief the Board on the current status
of the Postal Rate Case.)
6. Recommended Decision of May 16, 1980,
concerning Red Tag Proceeding, 1979
(Commission Docket No. MC79-3)
(The Governors will consider the above
Recommended Decision of the Postal
Rate Commission.)

Louis A. Cox,
Secretary.

[S-1217-80 Filed 6-20-80; 11:24 am]

BILLING CODE 7710-12-M

Test Report Federal Register

Tuesday
June 24, 1980

Part II

Environmental Protection Agency

Water Programs; Consolidated Permit
Regulations and Technical Criteria and
Standards; State Underground Injection
Control Programs

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 146

[FRL 1482-1]

Water Programs; Consolidated Permit Regulations and Technical Criteria and Standards; State Underground Injection Control Programs

AGENCY: Environmental Protection Agency.

ACTION: Final Rule for Part 146 and Amendments to Part 122.

SUMMARY: The Safe Drinking Water Act requires the Environmental Protection Agency (EPA) to develop minimum requirements for State programs to protect underground drinking water sources from endangerment by the subsurface emplacement of fluids through well injection. Such regulations have been established in the recently published Consolidated Permit regulations. The regulations promulgated here today establish the technical criteria and standards for use by States and EPA in the development and implementation of such State UIC programs. Neither these regulations nor the Consolidated Permit regulations establish requirements for owners or operators of injection wells at this time, with one exception. They establish requirements for State or EPA officials to be used in developing State UIC programs which, when they become effective, will in turn establish enforceable requirements for owners or operators of injection wells.

The one exception concerns owners or operators of wells which inject hazardous waste within the meaning of the Resource Conservation and Recovery Act (RCRA). Owners or operators of such wells must achieve interim status under the Hazardous Waste Management program, even though such injection practices will ultimately be controlled under the Safe Drinking Water Act once a State UIC program becomes effective.

Subpart A of these regulations spells out certain general provisions with respect to underground sources of drinking water, the classification of injection wells, the use of the area of review concept, corrective action requirements, mechanical integrity, criteria for establishing permitting priorities, and requirements for the abandonment of Class I, II and III wells. Subparts B through F of these regulations establish technical requirements and criteria that the Director is to apply in regulating the

construction, operation, monitoring and reporting of wells in Classes I through V. In the case of wells in Classes I through III, Subparts B through D also detail the information that the Director is to consider prior to the issuance of a permit.

During the final drafting of these Part 146 regulations, it became apparent that some changes to the Consolidated Permit Regulations were necessary. Six amendments involving four sections are included in this publication and are discussed in this preamble.

DATES: The regulations in this promulgation shall become effective on July 18, 1980 or thirty (30) days after their publication in the *Federal Register* (July 24, 1980), whichever is later. That date shall also be the implementation date for those portions of 40 CFR Parts 122, 123 and 124 which relate to Underground Injection Control (UIC) permits and programs (see 45 FR 33290).

The Safe Drinking Water Act allows States 270 days from the effective date of these regulations to develop programs which meet the regulatory requirements of 40 CFR Parts 122, 123, 124 and 146, and to submit such programs to EPA for approval. This period may be extended by another 270 days for good cause.

In order to assist EPA to correct typographical errors, incorrect cross-references, and similar technical errors, comments of a technical and non-substantive nature on the final regulations may be submitted until July 24, 1980. The effective date will not be delayed by consideration of such comments.

ADDRESSES: Comments of a technical and non-substantive nature should be addressed to, Thomas Belk, Chief, Ground Water Protection Branch, EPA, Office of Drinking Water (WH-550), Washington, D.C. 20460 (202) 426-3985.

FOR FURTHER INFORMATION CONTACT: Thomas Belk, Chief, Ground Water Protection Branch, Environmental Protection Agency, (202) 426-3985.

SUPPLEMENTARY INFORMATION:

Legal Authority

General

These regulations are being proposed under the authority of the Safe Drinking Water Act (the "Act" or "SDWA"), Pub. L. 93-523, December 16, 1974, as amended by Pub. L. 95-190, November 16, 1977. The Act is designed to protect the quality of drinking water in the United States.

Part A of the Act (section 1401) contains definitions. Part B (sections 1411-1416) addresses the quality of water provided by public water

supplies. EPA regulations implementing Part B of the Act are codified at 40 CFR Parts 141 and 142.

The regulations below relate to Part C of the Act (sections 1421-1424), entitled "Protection of Underground Sources of Drinking Water."

Basis for Concern

The legislative history of the Act reflects the basic Congressional concerns in enacting part C of the Act:

" * * * underground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground injection of sewage, sludge, and other wastes. Industries are injecting chemicals, by-products, and wastes. Energy production companies are using injection techniques to increase production and dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all the foregoing situations insofar as they may endanger underground drinking water sources." (HR Report No. 93-1185, July 10, 1974, p. 29).

The potentially dangerous practices which Congress sought to control in 1974 continue at an ever increasing rate. EPA estimates that there are in excess of 400,000 municipal, industrial, commercial, agricultural, and domestic wells currently injecting fluids below the surface, and that there are at least 5,000 new wells of these types each year. The purpose of Part C of the Act, and of the Underground Injection Control (UIC) program, is to establish a Federal-State system of controls which will insure that such underground injection practices do not endanger drinking water sources.

Relevant Statutory Provisions

A detailed discussion of the relevant statutory provisions and legislative history appears in earlier proposals of these regulations (41 FR 36730 et seq., August 31, 1976 and 44 FR 23738 et seq., April 20, 1979). Those details need not be repeated here, but it is useful to summarize the basic scheme of Part C of the Act.

1. Section 1421: Minimum Requirements for State Programs— Section 1421 requires EPA to propose and promulgate regulations specifying "minimum requirements" for State programs to prevent underground injections which endanger drinking water sources. Such minimum requirements must provide for at least the following:

- A program prohibiting any underground injection which is not authorized by a State permit. EPA may, at its discretion, however, allow some or

all underground injections to be authorized by rules without case-by-case permits (section 1421(b)(1)(A)).

- Protection of underground drinking water sources.

- Inspection, monitoring, record keeping, and reporting requirements (section 1421(b)(1)(C)).

- Coverage of underground injections by Federal Agencies and underground injections by any person on property owned or leased by the United States (section 1421(b)(1)(D)).

2. *Section 1422(a): List of States*—Section 1422(a) requires EPA to list in the **Federal Register** each State for which an underground injection control program "may be necessary" to ensure that underground injections will not endanger drinking water sources. With the recent listing of the remaining 16 jurisdictions (45 FR 17632), EPA has now listed all 50 States, the District of Columbia, and the Territories and Possessions of the United States (hereafter "States"). Such listings are hereby confirmed.

One major consideration in listing all of the States and other jurisdictions as needing UIC programs is that in the next few years the Agency will embark on a broad effort to protect ground water throughout the United States. EPA wishes to avoid instances where the surface disposal of hazardous wastes is controlled or prohibited under the Hazardous Waste Management (HWM) program mandated by the Resource Conservation and Recovery Act (RCRA), Pub. L. 94-580, October 21, 1976, while the underground injection of the same hazardous waste is not regulated by effective State programs. EPA is concerned that such a situation would create undesirable incentives to avoid regulations under the Hazardous Waste Management program by disposing of those regulated wastes below the surface. By listing all the States the Agency intends to bring the disposal of hazardous waste through well injection under regulatory control in a comparable time period with the control of surface disposal of hazardous waste under the Resource Conservation and Recovery Act.

3. *Section 1422(b)(d): Development of Underground Injection Control Programs*—Once EPA has promulgated the "minimum requirements" regulations, each State will have the opportunity to develop an enforceable underground injection control program. The UIC program must be adopted after reasonable notice and public hearings, and must comply with the minimum requirements.

Each State will have 270 days from the effective date of these regulations to

develop its UIC program and submit it to EPA for review. EPA may, for a good cause, extend this deadline for any State by up to an additional 270 days. The Agency does not intend to follow a liberal policy in granting extensions.

"Good cause" will be limited to the need to obtain legal authority from the legislature and similar reasons.

If EPA determines that a State UIC program meets the minimum requirements of Parts 123 and 146, EPA will approve the program. The State will then be deemed to have "primary enforcement responsibility" under Part C of the Act and there will be no Federal UIC enforcement actions in that State so long as the State continues to meet its responsibilities.

If a State fails to adopt and submit a UIC program in a timely fashion, or if EPA finds that a State's UIC program fails in part or in whole to meet the minimum requirements of Parts 123 and 146, EPA is required to propose and promulgate UIC regulations to be effective in that State. In such an event, a State will not be deemed to have "primary enforcement responsibility," ("primacy") and direct Federal enforcement of the UIC program will result (section 1422 (b), (c), 1423). In addition, a State which fails to achieve full primacy within 2 years of the award of its first UIC grant loses eligibility for further Federal grants.

4. *The 1977 Amendments*—Although they do not vary the operating scheme of Part C of the Act, the 1977 amendments to the Act, Pub. L. 95-190, should be noted. In addition to allowing the 270 day extension for State submission of requests for approval of State programs (see above), they emphasize that States have jurisdiction over injection by Federal Agencies or on Federal lands within the State. Federal Agencies fall under State regulations as would any other "person" (section 1447(a)). With respect to injection wells on Indian lands, however, jurisdiction remains with EPA (section 1447(a)).

New Section 1421(b)(3) instructs EPA to allow consideration of varying geologic, hydrologic, and historic conditions among States. The Section further cautions EPA against fashioning minimum requirements regulations which would "unnecessarily disrupt" existing State underground injection control programs now being enforced. These considerations however, may not be used to compromise the overall statutory requirement to prevent endangerment to underground sources of drinking water (section 1421(b)(3)(c)). EPA believes that these regulations amply serve these interests: the regulations offer States discretion to

tailor local programs to meet specific needs and to consider geologic, hydrologic, and historic conditions in fashioning rules and permit requirements.

History of Rule Making

EPA originally proposed regulations to implement Part C of the Safe Drinking Water Act on August 31, 1976 (41 FR 36730-45). That proposal included the program regulations, the technical criteria and standards, and the related grant regulations. Four hundred twenty nine (429) written sets of comments were filed and many persons commented at public hearings in Dallas, Denver, and Washington, D.C.

After careful review of those public comments, EPA determined that there were many ways that the initial proposal could be made generally more flexible and less burdensome without sacrificing the resulting environmental protection to any significant degree. Further, in the fall of 1978, the Agency decided to consolidate the regulations for its major permit programs: the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA); the UIC program under the Safe Drinking Water Act (SDWA); and the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA).

As a consequence of these events, the Agency took the following series of actions in 1978 and 1979. The grant regulations related to the UIC program were promulgated in final form on October 12, 1978 (43 FR 47130, *et seq.*). The initial group of 22 States needing an UIC program were listed on September 25, 1978 (43 FR 43420). In addition the UIC program regulations were repropounded in four parts on April 20 and June 14, 1979:

- 40 CFR Part 122 repropounded the regulatory framework for the UIC program.

- 40 CFR Part 123 described the elements of an approvable State program and proposed the process for EPA approval of State participation in the UIC program.

- 40 CFR Part 124 described the procedures for permit application and issuance which EPA intends to follow when it has primacy. Certain provisions of 40 CFR Part 124 would also be applicable to State UIC programs.

- 40 CFR Part 146 (being promulgated here) proposed the technical criteria and standards to be used by EPA or the State in implementing the UIC program.

Numerous written comments were received and five public hearings were held in Dallas, Washington, D.C., Chicago, Seattle, and Denver on the

Consolidated Permit regulations and Part 146. The preamble to the Consolidated Permit regulations responds to both the written and oral comments addressed to Parts 122, 123, and 124. Two hundred sets of written comments were received addressed to Part 146. These together with the oral comments received will be responded to in this preamble.

As noted in the preamble to the repropoed Part 146 (44 FR 23742), an effort has been made in the process of promulgating these regulations to reduce duplication by retaining only technical criteria and standards in Part 146 and transferring all programmatic requirements to Parts 122, 123 and 124.

It is not necessary to repeat here the requirements established and explained in the Consolidated Permit regulations. The reader is referred to 45 FR 33290. It is, however, important to emphasize that, in contrast to the 1979 proposal, the final Part 122 regulation requires owners or operators of wells used to inject hazardous waste to achieve interim status under RCRA until the controlling State UIC program becomes effective. Therefore, the totality of requirements applicable to State UIC programs are to be found in six sets of regulations.

- The UIC program grant regulations (43 FR 47130).
- 40 CFR Part 122 (45 FR 33418).
- 40 CFR Part 123 (45 FR 33456).
- 40 CFR Part 124 (45 FR 33484).
- 40 CFR Part 146 (Published here today).
- 40 CFR Part 265 (45 FR 33260).

Response to Comments

The preamble to the 1979 reproposal of Part 146 requested comments from the public in more than 20 instances. Additional comments were requested in the preamble to the Consolidated Permit regulations as well. Even though the programmatic requirements for the Underground Injection Control program are properly dealt with in the preamble to the Consolidated Permit regulations, it is desirable to discuss them at least in part here since the technical criteria and standards are an integral portion of the Underground Injection Control program. In addition, it is appropriate to err on the side of completeness, even at the risk of repetition, for the sake of a comprehensive discussion of the issues involved.

I. Regulatory Framework

A. *Coverage of the Regulations*—1. *Wells not near underground sources of drinking water.* In the preamble to the 1979 reproposal of Part 146, EPA explained that, at one point in developing these regulations, EPA considered not applying these

regulations to wells that do not inject into, through, or above drinking water sources (44 FR 23740-1). The preamble went on to explain the Agency's concern that such a provision could leave an injector uncertain about whether he is or is not covered by these regulations. Furthermore, although a particular well may not be injected into, through or above a drinking water source, it could still be a potential cause of endangerment by displacing formation fluids, through a hydraulic connection, into an underground source of drinking water.

In view of these concerns, the proposal suggested applying the regulations to all injection wells regardless of their location. The preamble went on to note that one result of this decision was that off-shore injection operations would be subjected to UIC regulations. In response, a number of commenters urged that off-shore operations be excluded from the coverage of the UIC program and that wells that do not inject into, through or above a drinking water source should be given recognition in some form. EPA agrees and the final Part 122 includes two sections intended to resolve this question.

First, § 122.31(d)(2)(i) excludes injection wells located on a drilling platform or other site beyond a State's territorial waters. The rationale behind this decision is that the Safe Drinking Water Act intended the underground injection control program to be a State program. Therefore, only injection wells that fall within the boundaries of a State are included and off-shore wells which fall beyond State boundaries are excluded.

Second, a new § 122.43(a) has been added. This section states that if a well does not inject into, through or above a drinking water source, the Director has discretion to ease the area of review, construction, mechanical integrity, monitoring, operating and reporting requirements applicable to such wells. In this regard EPA contemplated excluding such wells entirely from these regulations. However, it is only prudent that as long as an injection facility has some potential to contaminate underground sources of drinking water through lateral displacement, some minimal control should be exercised over it. At a minimum, the Director should have the opportunity to assess the potential for contamination. Thus, wells that do not inject into, through or above underground source of drinking water are still covered by the UIC program, so that they can be inventoried and their potential for endangerment

reviewed. However, discretion is given to the Director to determine whether any additional requirements need be applied in particular instances.

2. *The Inclusion of Class II Wells.*

The overwhelming majority of people commenting on the regulations on behalf of the oil and gas industry and the State regulatory agencies suggested that EPA should not bring Class II wells (those injection wells associated with the oil and gas industry) under the UIC regulations. Commenters advanced three reasons in support of this suggestion. First of all, they contended that EPA has failed to prove extensive damage to underground sources of drinking water from Class II injection practices. Second, the commenters maintained that existing State programs have done an effective job of preventing the contamination of underground sources of drinking water through Class II practices. Third, the commenters pointed out that Section 1422(c) of the SDWA instructs EPA not to include any requirements in its UIC regulations which interfere with or impede the disposal of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

A number of commenters also argued that natural gas storage facilities should be excluded from the regulations for reasons similar to the ones cited above, and because natural gas is neither a fluid nor a contaminant within the meaning of the SDWA.

EPA has carefully reviewed these comments and concludes that injection wells involved in natural gas storage operations do constitute underground injection within the meaning of the Act, and should be subject to these regulations. Section 1421(b)(1)(A) of the SDWA states that a State program, in order to be approved under Section 1422:

“... shall prohibit, effective three years after the date of the enactment of this Title any underground injection in such State which is not authorized by a permit issued by the State to authorize underground injection by rule);”

The term “underground injection” is defined in Section 1421(d) of the Act as the subsurface emplacement of fluids by well injection. In scientific usage, the term “fluids” is defined to include not only liquids that flow but also gases. Thus, reading these two provisions of the Act together, there seems to be little

question that EPA does have the authority to bring both natural gas storage wells and other injection wells related to oil and gas production under the control of the Act. A more precise statement of the issue then would seem to be the appropriate level of regulation to which such practices should be subjected.

After a careful review of the comments on this point, the Agency has decided that further easing of the requirements for gas storage wells is appropriate for several reasons. First, EPA agrees with the comments that pointed out that unlike the injection of other substances, gas is highly unlikely to result in the chemical contamination of drinking water, even if it migrates from the injection zone. Second, the Agency is persuaded by the arguments that these facilities are used to store a valuable commodity and that, therefore, the operator has a strong incentive to be able to recover the stored gas with minimal losses to the environment.

However, after a further review of the pathways of possible contamination, the Agency has concluded that the major concern is any possible contamination of underground sources of drinking water from the displacement of formation fluids when gas is stored in aquifers.

The Agency's final decision is to classify gas storage operations in Class V. As such they will be authorized by rule in satisfaction of the requirement in Section 1421(b)(1)(A) of the Act, and be subject to further study. If States, based on their assessment, recommend further regulatory controls for gas storage wells, appropriate requirements may be established in the future.

With regard to the argument concerning existing effective State programs, the Act does not set any procedures or standards for EPA to follow in deciding which States to list. The Committee Report, on the other hand (H.R. Report 93-1185, page 32), states that it was anticipated by the Committee that EPA will list all 50 States but perhaps not the District of Columbia and various territories and possessions.

Furthermore, EPA has deliberately chosen to avoid any evaluation of the quality of existing State programs or the preparation of a "report card" as the basis for the Administrator's decision to list or not to list. There are several persuasive reasons for this course of action. First of all, a significant amount of EPA resources would be consumed in the process of doing careful evaluations of all of the 50 States UIC programs as they exist today. Such a nationwide evaluation process would require years

to complete, involve hundreds of EPA personnel, and cost millions of dollars of contract support funds. Secondly, such an essentially adversary relationship could easily lead to embarrassment and resentment between States and EPA. It is not likely to be conducive to the long term objective of an effective State/Federal partnership in the implementation of UIC programs.

At one point in the development of the UIC program, it was the intention of the Agency to stagger the workload by phasing in the listing of States. It was to carry out the phasing that EPA developed the system of priorities to select the States which should be listed first. Factors to be considered in establishing such priorities included those approximating the potential threat (such as the number of wells in each State) and those approximating the importance of the ground water resources (such as the percent and absolute number of people relying on ground water). The basis for establishing priorities is given a fuller explanation in the Preamble to the initial listing of 22 States (43 FR 43420).

It should be emphasized that the Agency has always intended to list all States in keeping with the congressional guidance. The priority system discussed above was always intended as a basis for identifying the States to be listed first, not as a basis for deciding which States did or did not need a program.

In the process of consolidating the Agency's major permit program, however, it became apparent that the UIC program and the Hazardous Waste Management program are related at a number of points. The Agency, therefore, accelerated the listing of States in order to apply regulatory controls under UIC and HWM in a coordinated and orderly manner.

It is inevitable that the establishment of a Federal program necessarily carries with it certain uniform monitoring, reporting and other administrative requirements. This, however, is not to say that the Agency has made the judgment that all currently existing State programs would have to change radically in order to achieve EPA approval for delegation. Indeed, mindful of the instructions of the SWDA to minimize the disruption of existing effective State programs, EPA has gone to some lengths to avoid any requirement which would force any State to seek new legislation or to seek changes in existing regulations. While it is clear that there are variations in existing State programs to control underground injection, and that these regulations will have the effect of upgrading some of the State programs, it

is EPA's expectation that many if not most State programs will be able to win EPA approval with only minimal changes. The Agency looks forward to working with State staffs to develop approvable programs as expeditiously as possible.

The House Committee Report also spoke to the congressional intent in adopting the amendments instructing EPA not to set requirements which would interfere with or impede oil and gas production (H.R. Report #93-1185, p. 31):

"This amendment prohibits regulations for State UIC programs from prescribing requirements which would interfere with production of oil or natural gas or disposal of by-products associated with such production, except that such requirements are authorized to be prescribed if essential to assure that underground sources of drinking water will not be endangered by such activity."

The Committee's intent in adopting this amendment was not to require EPA to bear an impossible burden of proof as a condition of promulgation of any such regulation. Rather, the Committee sought to assure that constraints on energy production activities would be kept as limited in scope as possible while still assuring the safety of present and potential sources of drinking water. Similar provisions were adopted with respect to EPA regulations which are to be promulgated when a State fails to adopt an approvable underground injection control program.

In deciding what is an "essential" requirement, the Committee intends that the types of measures referred to in the Administrator's Decision Statement Number 5 and those referred to in this report be considered to be "essential" unless the contrary could be demonstrated with respect to a specific well or injection. Moreover, in using the words "interfere with or impede" the Committee did not intend to include every regulatory requirement which would necessitate the expenditures of time, money, or effort. Rather, the Committee intended to refer to those requirements which could stop or substantially delay production of oil or natural gas."

Thus, while these UIC regulations may create additional requirements and impose additional economic costs on oil and gas producers, and while they may result in the closure of certain marginal wells, the Agency is not persuaded that these regulations would result in a substantial delay of oil or natural gas production in the meaning of the Congressional intent.

Finally, the Agency finds little merit in the arguments that it has failed to demonstrate the necessary for the UIC regulations because it has not cited numerous instances of damage to underground sources of drinking water. It should be noted that in the basis for concern expressed in the House Committee Report (quoted earlier in this Preamble) Congress had clearly

concluded that the underground injection of contaminants is an increasing problem. Numerous instructions to the Agency in the House Report No. 93-1185 would seem to indicate that the Congress was fully aware that it was enacting a preventive statute which was aimed at preventing the contamination of the Nation's ground water resources, rather than at cleaning up after the damage had occurred. As one example of this, it is interesting to note the discussion of the definition of endangering drinking water sources (H.R. Report 93-1185, page 32):

"The Committee was concerned that its definition of 'endangering drinking water sources' also be construed liberally * * * The definition would be met if the injected material were not completely contained within the well, if it may enter either a present or potential drinking water source, and if it (or some form into which it might be converted) may pose a threat to human health or render the water unfit for human consumption. In this connection, it is important to note that actual contamination of drinking water is not a prerequisite either for the establishment of the regulations or for the enforcement thereof."

Furthermore, the Agency is mindful of the fact that Section 1421(b)(1)(A) of the SDWA specifies that once a State UIC program becomes established all underground injection is considered unlawful unless authorized by the State's UIC program.

Thus, the Agency did not conduct field work to document a national file of every case of contamination by a Class II injection practice. Nor did it try to establish the percentage of the Nation's ground water which has been contaminated by specific types of injection well practices. The Agency does acknowledge a responsibility, however, not to regulate needlessly or to force the expenditure of national resources for frivolous purposes. Therefore, the Agency did review court cases and other available material to establish that the injection practices in Class II and the other classes do have a potential for contaminating underground sources of drinking water. We believe that documenting the potential for contamination does satisfy the legal standard imposed upon the Agency by the SDWA.

B. Test of Endangerment. The definition of the term "endangerment" has been one of the more commented upon sections of the UIC regulations. The original 1976 proposal of the UIC regulations followed the language of the SDWA, Section 1421(d)(2) of the Act states:

"Underground injection endangers drinking water sources if such injection may result in

the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons."

The term "contaminant" is defined in section 1401(6) as "any physical, chemical, biological or radiological substance or matter in water."

The 1976 proposal, therefore, offered the following definition:

"Underground injection endangers underground drinking water sources if (1) such injection may make it necessary for a public water system using an underground drinking water source to increase treatment of the water, or (2) if such injection might make it necessary for a public water system which uses the source in the future to use more extensive treatment of the water than would otherwise have been necessary, or (3) if such injection may otherwise adversely affect the health of persons such as by adding a substance that would make water from the source unfit for human consumption." (Section 146.1 (x), 41 FR 36737).

Numerous adverse comments were received on this suggested definition. Many believed the definition to be confusing and vague, especially the third element relating to adverse effects on the health of persons. Other commenters held that EPA had simply restated the law in different words, and that the regulations should either use the statutory definition or one that could be applied with operational precision.

In response, the 1979 reproposal avoided a formal definition of "endangerment." Rather, it attempted an operational test that could be used with some operational significance. As the Preamble discussion pointed out (44 FR 23740):

"The test in these repropounded regulations is whether injection operations will cause the migration of injected or formation fluids into an underground source of drinking water. If injection into a well can cause such migration, the owner/operator must take appropriate action to eliminate the fluid migration."

The "no migration" standard was applicable to wells in Classes I-III, which were to achieve it through the use of sound engineering practices. The proposed ban/phase out for Class IV wells was also consistent with this standard. Since no technological requirements could ensure the absence of migration from wells designed to inject into or above USDWs, this practice was to be discontinued.

The proposal recognized two exceptions to the standard. One was in the case of Class V wells. EPA had determined (and still believes) that too

little is known about the practices grouped in this class to make them ripe for regulatory controls. At the same time, the Agency did want to emphasize the responsibility of the Director to take action in cases where Class V wells did pose a real problem.

The Agency believed that a more selective standard than "no migration" was appropriate to define such situations because many Class V wells, even beneficial practices such as aquifer recharge wells, are designed to inject into potential USDWs. As a consequence, § 146.53 (44 FR 23766) required the Director to act when he gained "knowledge of a Class V well which presents a significant risk to the health of persons * * *"

The other exception appeared in § 146.22(c) (33 FR 23762) which gave the Director discretion to relieve Class II wells in existing injection fields of the applicable casing and cementing requirements. One condition of granting relief was that the well injection "will not result in the migration of fluids into an underground source of drinking water so as to create a significant risk to the health of persons using the source of drinking water." This formulation was chosen because the Agency wanted to recognize the special nature of construction requirements for wells in existing injection fields. While the Agency did not believe it appropriate to grant an unconditional license to endanger USDWs, it did believe it appropriate to allow additional scope in this instance in keeping with the proviso of the SDWA to avoid interfering with or impeding oil or gas production.

Commenters agreed that the proposed scheme was less vague than the earlier definition. However, several commenters now argued that the definition was too broad and that the term "migration" must be restricted in some fashion. Others were concerned because the definition seems to include displacement through underground hydraulic connections and argued that such migration was hard to anticipate, monitor, and, in some cases, control. Some commenters suggested that the term "migration" should be modified to some term such as "harmful migration", or "migration in harmful quantities." Others urged the use of such terms as "detectable migration" or suggested the use of ambient water quality standards broader than the parameters controlled in the National Interim Primary Drinking Water Standards. Still others questioned the appropriateness of departing from the language of section 1421(d)(2) to establish less restrictive standards for

Class V and the casing and cementing requirement in Class II.

EPA appreciates these suggestions but does not believe that they would improve the usefulness of the test. The use of a broader set of water quality standards or such modifiers as "harmful" would reintroduce the unworkability of the definition that was offered in the original proposal. The use of the term "detectable" would be redundant because, by definition, a migration into underground sources of drinking water could only be ascertained if it can be measured or detected. Finally, the lateral displacement of formation fluids is one of the pathways of contamination of concern in these regulations and EPA fully intended to bring it within the scope of this definition.

Consequently, the final regulations retain the "no migration" standard for Classes I-III, although it is now stated as "movement of fluids" or "movement of injection or formation fluids." (40 CFR 122.34). The Agency intends no substantive change through the substitution of "movement" for "migration." The two terms are considered synonymous and are used interchangeably in these regulations. The Agency does not believe that it is an overly protective standard. It does not require total containment; only that any leak or displacement not reach any USDW. It has the merit of being measurable and can be achieved through the use of readily available engineering technology which many injectors already apply.

Similarly, the "significant risk" standard has been retained in § 146.22(c). The Agency still believes that this is an appropriate condition for granting relief from the Class II casing and cementing requirements.

The Agency has decided to review the ban/phase out for some Class IV wells, while retaining this approach for those injecting into USDWs. The applicable standard is one of the questions in the further consideration of certain Class IV requirements. This subject is discussed more fully below.

In the case of Class V wells, the Agency has decided to establish a standard more closely in conformance with the statutory language. 40 CFR 122.34 (c) and (d) now require the Director to act if he learns that a Class V well "may cause a violation of primary drinking water regulations" or "may be otherwise adversely affecting the health of persons." These are not deemed to be more stringent or more inclusive standards. The Agency has not reconsidered its judgment that Class V wells are not ripe for regulatory

controls, and enforcement action by the Director is not expected to become the rule rather than the exception it was intended to be under the Class V regulatory scheme. The Agency has decided that the use of statutory language is more appropriate in this case than a standard based on "significant risk."

The explicit authority to apply permits to Class V wells is new. Again, this is not intended to make the Class V requirements more stringent. The Agency, however, realized that the reposed regulations had failed to provide the Director with any mechanism for applying controls in the cases where action needs to be taken with regard to a Class V injector to apply for a permit is intended to remedy this oversight.

C. Aquifer Restoration vs. Protective Action. A number of commenters urged the Agency to establish explicit requirements in the regulations that would force owners or operators of wells to take action to restore the quality of an aquifer under appropriate circumstances. The Agency has carefully considered these suggestions and has chosen not to establish explicit requirements for the following reasons.

Aquifer restoration has been tried on a pilot scale in shallow aquifers in connection with certain solution mining operations. Our review of the outcome of these pilot projects persuaded the Agency that full scale attempts at aquifer restoration could be very expensive with uncertain outcomes. Certainly in cases where solution mining is accompanied by an expected subsidence or catastrophic collapse in the overlying strata, the potential benefits of an aquifer restoration attempt are questionable.

The Agency also hesitates to impose restoration requirements because it interprets the mandate of the SDWA to be a preventive one. We believe that the main thrust of these regulations should be the prevention of further contamination rather than the restoration of aquifers that may already be damaged. The Agency is very much concerned that such requirements may divert scarce resources, both Federal and State, from the task of controlling underground injection which is the mandate under the Act.

At the same time it is not the intention of these regulations to preclude the Director from requiring the restoration of aquifers if such action is appropriate in particular cases. In establishing their UIC programs, the States are free to set more stringent requirements than the minimum requirements in these regulations. In addition, new § 146.10(d)

requires the owner or operator of a Class III well to submit a plan of abandonment which must demonstrate that no migration from the mining zone into underground sources of drinking water will occur after abandonment. In setting abandonment requirements, the Director is given the discretion to set such aquifer clean up and monitoring requirements as he deems necessary to insure that the abandonment plan will be effective. The Agency will continue to assess the development of technology in this area and may establish additional appropriate requirements in the future.

D. Performance Standards vs. Technical Requirements. Many commenters criticized EPA for over-regulating by attempting to set technical requirements. They urged that EPA establish the objectives that it wants to achieve and allow discretion to the State Director and the injector in achieving those objectives. At the same time, many of the requirements were criticized as being too vague and allowing too much undirected discretion to the permitting authority. Such commenters urged EPA to specify more clearly precisely what the standards are.

As these conflicting comments demonstrate, the tension between performance standards and technical requirements is an inherent problem in attempting to write national regulations in a highly technical area. Supporters of performance standards argued that they are an efficient means of regulating because they allow the owner or operator to choose how he will come into compliance. This, it is argued, tends to foster the development of new technology rather than stifling it and allows the most efficient means of coming into compliance to be applied in a particular instance.

Supporters of technical requirements argue that performance standards become almost impossible to enforce. Determining compliance or lack of compliance with the objectives of the regulations becomes a matter of long, drawn-out, highly technical arguments among technical experts. Further, it is argued that both in fairness to the regulated community, and in order to make the regulations enforceable, the regulations have a responsibility to spell out clear-cut requirements that the owner or operator understands and against which compliance or the lack of it can be measured.

Precisely because a great deal is still unknown about the movement of fluids below the surface, and because the monitoring of interactions is both difficult and uncertain, the approach of the UIC regulations has been to

translate the mandate of the SDWA into straight forward "good engineering" practices such as mechanical integrity of the tubular goods and the absence of man-made communication between the injection zone and higher strata. The presumption of the regulations is that as long as an owner or operator is in compliance with the technical requirements of "good engineering" practices, endangerment of nearby underground sources of drinking water will have been avoided. In cases where migration into underground sources of drinking water still occurs, even though the technical requirements have been complied with, the Director may impose additional requirements. In general, discretion in these regulations has been allowed where it seemed appropriate and possible to do so. On balance, this still seems the best approach to the Agency and it has been retained in the regulations.

E. Permitting Sequence. Many commenters pointed out an inconsistency between proposed 40 CFR Part 122 and 40 CFR Part 146 with respect to just when in the life cycle of a well a permit had to be obtained. A more important point of confusion was that the regulations seemed to require that the Director, prior to issuing the permit, review certain information which, at least in some cases, could not be produced without injecting into the well, even though the regulations seemed to prohibit injection without a permit.

The Agency agrees that the proposed regulations were not clear on this point and has now clarified the permitting sequence. The regulations now make clear that the requirement is for a single multi-phase permit similar to the current practice in a number of States, e.g., Michigan. In the case of a new well, the owner or operator must apply for a permit, which may be issued to him after appropriate public comment and hearings, before any work to drill or convert a well begins (see 40 CFR 122.33 and 122.38(b)). The permit is to have three phases: construction, testing and stimulation; operation; and abandonment. The applicant's plans for the construction and preparation of the well, as approved by the Director, will be incorporated into the permit as permit conditions. Should the plans change in any material way, the permittee must notify the Director and obtain his concurrence to the changes. Such modifications are considered to be minor modifications and can be approved administratively without the requirement for public hearing and comment.

It is the responsibility of the owner or operator to notify the Director of the completion of each phase and to obtain the Director's written or oral permission to proceed with the next phase (see 40 CFR 122.41(c), 122.42 (a) and (f), and 146.10). The permittee must provide the Director a 13 day opportunity to conduct a physical inspection of the well before putting the well into operation. Conditions for the operation of the well will be established by the Director as part of his notification to the owner or operator that he may proceed with the next phase. The Sections of Part 146 specifying the information to be submitted by the applicant and to be considered by the Director have been modified to reflect this clarified scheme.

The owner or operator of an existing well must submit his application at the time he is required to do so by the Director in accordance with the Director's plan for re-issuing permits submitted as part of the State program to EPA for approval. The permit will apply to the operating and abandonment phases of the well's life, but may incorporate compliance schedules according to which the injector must perform such corrective actions as the Director may require.

The Agency believes there are several advantages to this approach, not the least of which is that it will minimize the changes required in the current procedures of most States. By placing the permitting decision at the beginning of the process, it assures the applicant of a decision before any major investment has been made. Since the approval to proceed to the next phase can be handled administratively, it avoids any major delays once the project has been initiated. Finally, it provides a greater degree of environmental protection by clarifying the authority of the Director to supervise the construction and testing of the well in addition to its operation and abandonment.

F. Coordination of Authorities Under SDWA, RCRA and CWA. One of the questions addressed in the consolidation of the Agency's major permit programs was the coordination of overlapping authorities over well injection. Section 3005 of RCRA states that once the Hazardous Waste Management program is established, hazardous waste may only be disposed of (including injected) in a site approved under the authority of RCRA. At the same time, Section 1421 of SDWA states that once a UIC program is established for a State, any well injection in the State is prohibited unless authorized under its UIC program. Since there are differences between SDWA and RCRA,

these parallel statutory sections could subject the operator of an injection well used to dispose of hazardous waste to duplicative and possibly conflicting requirements. In keeping with its intention of reducing administrative burdens on the regulated community, the Agency offered the following resolution in the 1979 proposal of the Consolidated Permit regulations. The surface management of hazardous waste would be regulated under RCRA while injection wells would be regulated under the SDWA. The separation point would be at the cut-off valve at the well-head. A facility would have to obtain authorization under SDWA to operate the well itself. Any attendant surface facilities used to manage hazardous waste would have to be permitted under RCRA. The rationale for this proposed method of regulation was twofold: First, the technical differences between surface disposal techniques and well injection argue that the two sets of practices are appropriately regulated through differing technical requirements; second, the proposal avoided the imposition of duplicative procedural requirements on the operator of the well.

Three major comments were received on this proposed course of action. Two of them agreed in general with EPA's decision as long as the owner or operator of the well would have to complete the manifest-keeping requirements under RCRA. This was, of course, one of the conditions specified in proposed 40 CFR 122.44 and 40 CFR 146.09. The third commenter objected strongly arguing that: (1) The language of Section 3005(a) of RCRA does not allow the disposal of hazardous waste in any facility that is not permitted under RCRA; and (2) the disposal of hazardous waste should be regulated under RCRA because that Act provides a greater level of protection to the environment.

EPA has reviewed these comments with great care and rejects the general argument that the level of protection afforded the environment from the potential effects of underground injection would necessarily be greater under RCRA than under SDWA. While it is true that RCRA authorizes the Agency to protect human health and the environment from the impacts of hazardous waste disposal, the scope of this mandate is not directly relevant to well injection. The major concern from the injection of fluids is the potential danger to underground sources of drinking water, and the Agency believes it has adequate authority under SDWA to protect such sources from the effects of well injection. Furthermore, because of

technical differences in the practices, the requirements which are appropriate to surface disposal methods are not in many cases, appropriate for well injection. Indeed, the Agency would promulgate essentially the same technical requirements to regulate the well injection of hazardous wastes whether it did so under SDWA or RCRA.

In response to comments, however, the Agency has changed its approach to coordinating RCRA and SDWA authorities in three ways. First, under SDWA no enforceable requirements will apply to operators of injection wells in a State until the UIC program for that State is effective. Because of the statutory scheme of SDWA, State programs will not be established until one to two years after the minimum requirements in 40 CFR Part 122 have been promulgated. EPA agrees that, under the proposed regulatory approach, the SDWA would, therefore, not have provided a level of control equivalent to RCRA over wells used to inject hazardous waste during the interim period. Consequently, the final 40 CFR 122.23 requires that owners or operators of Class I and IV wells obtain interim status under RCRA. Certain standards for interim status are contained in 40 CFR Part 265 Subpart R which has been made applicable to such injectors. Additional standards have been proposed (see 45 FR 33280) for future inclusion in Part 265. Injectors of hazardous waste will ultimately be regulated under the SDWA. However, prior to the time a State UIC program is effective, hazardous waste injection wells may be permitted under RCRA (see 40 CFR 122.30) for a period not to exceed two years.

Second, in contrast to the proposal, injection wells will now be authorized under both RCRA and SDWA once the applicable State UIC program becomes effective. A permit by rule under RCRA (see 40 CFR 122.26) will authorize the disposal of hazardous waste into an injection well if the well has been properly authorized under SDWA. This final resolution was adopted because it satisfies the statutory language of both Acts. At the same time, the goal of minimizing procedural burdens on the regulated community will be maintained. As a practical matter the owner or operator of a well used to inject hazardous waste will still only have to obtain authorization and comply with requirements applicable to him under the UIC program. Compliance with applicable UIC requirements will be deemed to satisfy RCRA requirements as well.

A final point concerns the delegation of interim status authority to States. States will be given the option to choose whether to assume interim control over hazardous waste injection wells under RCRA and then convert to control under SDWA. Alternatively, they may leave interim regulation of such wells with EPA and accept delegation only at the time their UIC program becomes effective. If a State chooses the former method, it will be required to assume responsibility under RCRA through the same agency that will ultimately exercise the responsibility under the SDWA.

Other changes have also been made in the regulatory scheme for Class IV wells. They are discussed later in this preamble.

Injection wells, with the exception of Class II, could also be regulated either under the Clean Water Act (CWA) or the SDWA. More specifically the CWA requires that in cases where the National Pollutants Discharge Elimination permitting system (NPDES) is delegated to States, the States must have the legal authority to also control the disposal of pollutants into injection wells. The proposed Consolidated Permit regulations in § 123.74 required State NPDES permit programs to have the authority to issue permits to control the disposal of pollutants into wells.

Such a requirement could conceivably have some undesirable results. To the extent that there are differences between the CWA and the SDWA, such a requirement could, for example, require a State to develop a UIC program which meets the requirements of the SDWA and then to develop separate authorities to control well injection that meet the requirements of the CWA. In addition, this section could be read to imply that the UIC program and the NPDES program could only be delegated in concert.

In order to resolve these difficulties, final Section 40 CFR 123.72 now requires that State law provide authority to issue the permits in question and specifies that an approved UIC program satisfies this requirement for the NPDES program.

II. Major Programs Concepts

A. *Well Classification.* In the proposed 40 CFR Parts 122 and 146.05, the Agency proposed a revised scheme for classifying injection wells and requested comments on its appropriateness. In general, commenters agreed that this was a workable classification system. A number of commenters, however, suggested the need for further clarification. Section 146.05 of these regulations attempts to resolve the points that were raised.

First, a number of commenters pointed out that in the case of Class I and Class IV wells, part of the definition of the well involved the relationship of the well to the nearest drinking water source, without, however, specifying any distance or other limitation. The applicable definitions now specify that Class I wells must inject below the deepest formation which, within a quarter of a mile of the well bore, contains an underground source of drinking water. Conversely, Class IV wells are those that inject into or above a stratum which, within a quarter of a mile of the well, contains an underground source of drinking water. As a basis for this clarification, the Agency relied on the concept of the area of review and conformed these definitions to the minimum of one-quarter mile to be used when the area is established by the use of a fixed radius.

Second, many commenters were concerned about sand backfill wells and the possibility that, because of the nature of the injected materials, these wells could come under the classification of hazardous wastes under Class IV. This was not the result intended by the Agency. The final regulations now specify that sand backfill wells are to be considered Class V. They are to be assessed for their environmental impact and future regulations may be applied to them.

Third, some commenters suggested that the proposed regulations left some confusion over the status of non-residential septic systems. Single-family domestic sewage disposal systems are not covered under the UIC program. Multiple dwelling and industrial sewage disposal systems are generally included in Class V. Those that are used to dispose of hazardous waste fall under Class IV.

Fourth, a number of commenters suggested that disposal wells handling blowdown water discharges from gas refinery plants and similar wastes be treated not as Class I but as Class II wells. Given the nature of these operations and the chemical composition of the injection fluids, the Agency has decided that these operations would be more appropriately regulated under Class I.

Fifth, some commenters expressed confusion over the status of injection wells used to store fluids which are used in the recovery of stored hydrocarbons. Section 146.05 clarifies that such wells are now to be treated not as salt water disposal wells, but as Class II hydrocarbon storage wells.

Sixth, during the comment period, EPA was made aware that hazardous waste may in some cases be injected in

situations other than into, through or above an USDW. Because of the definition of Class IV, these injections would, under the proposed regulations, have fallen into Class V. Commenters argued that the injection of hazardous waste merits stricter regulation than the requirements of Class V even if it is not into, through or above an USDW. The Agency agrees with this view, especially because it seeks to make the control of hazardous waste disposal under RCRA and SDWA comparable. Therefore, the injection of hazardous waste other than through Class IV wells is now included in Class I (see 40 CFR 122.32(a)).

Seventh, the proposed regulations included "nuclear" storage and disposal wells in Class I (see proposed 40 CFR 122.34, 44 FR 34282). The definition of the term "solid waste" (and therefore "hazardous waste") under RCRA may include certain kinds of radioactive waste, but specifically excludes source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended. Since the SDWA does not contain a similar limitation, the Agency proposed to include the injection of such material in Class I. Few commenters addressed this aspect of the proposal, although some objected to granting States authority over these sources. The President on February 12, 1980, issued an Executive Order outlining a program to arrive at a comprehensive radioactive waste management program. Until this program is complete, and EPA has had an opportunity for full consultations with the Nuclear Regulatory Commission, the Department of Energy, and other agencies with responsibilities potentially affecting radioactive wastes, it would be premature for EPA to issue regulations concerning the disposal of radioactive wastes into Class I wells. Moreover, EPA wishes to coordinate any regulations governing sand backfill wells with regulatory measures it may undertake under the Uranium Mill Tailings Act. Accordingly, EPA has modified the classification of wells so that wells disposing of radioactive wastes below strata containing a USDW will be Class V wells.

However, the disposal of radioactive wastes into or above USDWs is an environmentally undesirable practice. Therefore, EPA has added a definition of "radioactive waste" in § 122.3 which clarifies that the term "nuclear" waste used in the proposal was intended to cover not only the radioactive wastes which are hazardous wastes under RCRA but also fission by-products and similar wastes covered under the Atomic Energy Act of 1954. The disposal

of all such wastes into or above USDWs is included in Class IV and will be regulated according to the scheme promulgated for Class IV wells: those Class IV wells injecting into a USDW are prohibited; requirements for other Class IV wells will be promulgated in the fall of this year. (See the discussion of Class IV requirements below.)

Section 122.31(d) now includes specific inclusions and exclusions from the coverage of the UIC program. Notes have also been added to § 146.05 for the convenience of the reader.

B. Underground Sources of Drinking Water. Since the original proposal of the UIC regulations in 1976, an underground source of drinking water has been defined as an aquifer or its portion which either currently provides water for human consumption or is capable of yielding water containing fewer than 10,000 mg/1 of total dissolved solids (TDS). A number of commenters again objected to the reproposal of 1979 setting the standard at 10,000 mg/1 of TDS, and offered a number of alternative concentration levels. EPA has carefully reviewed these alternative suggestions and has once more decided to retain the standard of 10,000 mg/1 of TDS. None of the alternative concentrations have any superior justification in terms of current State practice, human health, or technological considerations. In the absence of any overriding argument to the contrary, the Agency will follow the standard in the House Committee Report accompanying the SDWA.

A number of other comments were offered on the scheme for designating underground sources of drinking water. Some pointed out an apparent conflict between Part 122 and Part 146, in that the former seemed to require the State Director to designate underground sources of drinking water while the latter seemed to require him to designate aquifers which were exempted from protection. Others urged the Agency to clarify the procedure for making the initial designation and the procedures whereby designation could be changed in the future. Still others pointed out that the use in the exemptions of such terms as "economically or technologically impractical" were imprecise and ought to be defined further. Finally, some argued that the exemption provided for "oil or mineral producing" aquifers seemed to imply that only areas actively being worked could receive such an exemption. They argued that the future development of mining sites could be hampered because of the uncertainty of whether or not the mining site could

receive an exemption from the definition of underground source of drinking water. Therefore, they urged the use of the term "bearing" so that prospective mining sites would be assured of receiving a permit to operate, and thereby enhance their ability to obtain financing.

EPA agrees with some of these comments and disagrees with others. The final regulations attempt to clarify the definition of "underground source of drinking water" as well as the process for designation in the following way. The terms "underground source of drinking water" and "exempted aquifer" are defined in § 122.3. "Underground sources of drinking water" are aquifers or their portions which currently provide water for human consumption or which are capable of yielding water containing fewer than 10,000 mg/1 of TDS. Under § 122.35, the Director, as part of the State program he submits for approval to EPA, may identify those aquifers or aquifer portions which will be considered as underground sources of drinking water. This identification may be done by definition, description, illustration, or other means. The reason for this is to relieve the Director of the requirement for extensive underground exploration and mapping, or of supplying a level of detail with his State program submission which will force a modification of the State program for every minor modification in the depth or extent of the fresh water zone. As stated in § 122.31(d), an aquifer is an USDW if it fits the definition even if it has not been affirmatively identified by the Director.

An "exempted aquifer" is an aquifer or its portion which would otherwise meet the standard for an USDW but has been designated as "exempted" by the Director in conformance with § 146.04. Section 146.04 states that a Director may designate as an exempted aquifer an aquifer or aquifer portion which does not already provide water for human consumption but is capable of yielding water with a concentration of fewer than 10,000 mg/1 of TDS, if the aquifer or its portion is:

- (1) Mineral, hydrocarbon, or geothermal energy producing;
- (2) Situated at a depth of location which makes recovery of water for drinking water purposes economically or technologically impractical;
- (3) So contaminated that it would be economically or technologically impractical to render it fit for human consumption; or
- (4) Located over a Class III mining area subject to subsidence or catastrophic collapse.

The first three of these conditions have changed only in substituting the broader term "hydrocarbon" for "oil" in the first proposed criterion. The Agency has declined to change the term "producing" to "bearing" in the first condition because it did not want to open the possibility of wholesale exemption of aquifers, over large areas of the country, which become identified as being capable of producing one or another mineral. Similarly, the Agency has chosen not to define further the term "economically or technologically impractical." After considering the alternatives, the Agency decided it was more appropriate to leave the determination of what is or is not economically or technologically impractical to the discretion of the Director in the particular case.

The fourth exemption is new. It is an attempt to respond to those commenters who correctly pointed out that certain Class III mining operations necessarily involve the subsidence or collapse of strata above the injection zone. In such cases, the probability of harm to the overlying aquifers is substantial once operations are underway. The decision to protect these aquifers is more appropriately made at the time the mining operation is permitted.

In cases where the Director chooses to exempt an aquifer, he is required to submit not only detailed maps, but also sufficient justification in support of the exemption.

The Director may exempt aquifers as part of the State program he submits to EPA for approval. Therefore, the designations, by the nature of the process, are subject to public hearing and comment as well as the review and approval of EPA. The Director is free to change the designations or add to them at a later date. Such a change, however, would constitute a major modification of the approved State program and, as a major modification, is subject to public hearing and comment, as well as EPA review and approval.

C. Area of Review and Corrective Action. Most of the comments received on the revised area of review/corrective action concept contained in the re-proposed 40 CFR Part 146 were generally supportive, although a number of specific suggestions were made. *First*, a number of commenters pointed out that the equation provided in the proposed § 146.06 was applicable only in certain circumstances. EPA agrees, but notes that in proposed § 146.06(c), the alternative calls only for the computation of the zone of endangering influence based upon certain parameters. The modified form of the equation provided in that section was

illustrative and for the convenience of the reader. It was not intended to represent the only acceptable equation to be used in all cases.

Second, a number of commenters suggested that the applicant for a permit be given a voice in the decision of how the area of review would be determined for his well or field. EPA agrees and has added to the regulations giving the Director discretion to consult the applicant in this regard (§ 146.06). *Third*, some commenters suggested that the one-quarter mile radius be made an absolute minimum regardless of whether the zone of endangering influence was determined as fixed distance or through computation. EPA disagrees with this suggestion. In cases where the zone of endangering influence is actually less than a quarter of a mile, such a requirement would force the applicant to expend resources and do work which may not be justified by the expected benefits. *Finally*, some commenters suggested that the area of review be drawn from the edge of a field or project rather than the individual well. EPA agrees. The concept was included in the language of the proposed § 146.06(c) and has been retained in the final requirement.

Two comments were made with regard to the proposed corrective action requirement. The first suggestion was that the text of the proposed regulations seems to imply that it is up to the applicant to collect the information on the number of wells penetrating the injection zone within the area of review. The argument is that such information is kept by the State and, therefore, the requirement should be for the State, rather than for the applicant, to gather this information. The Agency agrees only in part. While it is correct that in many cases this information is in the files of the State, and, therefore, simplicity would suggest that the State should make use of this information in the review of the permit application, the Agency believes it important that the ultimate burden for providing the information necessary for an adequate review of a permit application should rest with the applicant and should not be transferred to the permitting authority. Therefore, the language of the final regulations makes it possible for the State to supply this information when, in the judgment of the Director, it is appropriate to do so. However, the final regulations do not explicitly relieve the applicant of the responsibility for making such information available when the Director deems it appropriate.

Another area of comment concerned the possible interpretation that in

requiring corrective action on wells that penetrate the injection zone within the area of review, the Director may be put in a position of requiring the applicant to go onto the property of others, or to take corrective action on the property of others in order to meet the permit conditions. EPA agrees that it is inappropriate for these regulations to require an applicant to perform actions which may not be within his legal ability, as a condition or precondition of obtaining a permit. As a consequence, the corrective action requirement has been revised (§ 122.44) to provide the Director and the applicant with three options.

First, if he can arrange it with the neighboring owners and operators, the applicant may, before he begins to inject, take the corrective action prescribed by the Director and then inject at his intended injection pressure.

Second, the Director may issue a permit with a reduced injection pressure calculated so that the potential zone of endangering influence will be no bigger than the area under the control of the applicant in which the applicant can take the appropriate corrective action.

Third, the permit can be issued with the requested injection pressure but with the condition that the owner or operator must operate at a lesser pressure until such a time that he takes the corrective action required to allow a more extensive zone of endangering influence. In arriving at this resolution, EPA did not agree with suggestions that the State use its authority to force the owner or operator of the "bad" well to repair it. The Agency believes that it is not appropriate to use the authority of the State to force one individual, without his agreement, to incur expenses and effort which benefit another party. In addition, abandoned wells in the area of review also may have to be fixed. In many cases, it may not be possible to locate a responsible party.

D. Mechanical Integrity. Proposed § 146.08 defined mechanical integrity as having two parts: (1) The absence of a significant leak in the casing, tubing or packer; and (2) the absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. The proposal specified that the absence of significant leaks was to be established through the use of eight listed tests. The absence of significant fluid movement could be demonstrated either through well records demonstrating the presence of adequate cement or the result of a cement bond log, sonic log, temperature log, density log, or dual neutron log. The

proposed section further specified that the Director may allow the use of a test other than those listed upon the written approval of the Administrator of EPA. The owner or operator of the well was to demonstrate the mechanical integrity of his injection well as a condition of authorization and at least every 5 years thereafter.

Virtually all aspects of this requirement received public comment. However, there does not appear to be a clear consensus in the thrust of the suggestions offered the Agency. Some commenters argued that a demonstration of mechanical integrity every 5 years is too frequent. Others argued that it is not frequent enough. Some questioned the reliability of cementing records, while others supported the use of such records and urged the Agency to go beyond its proposal by allowing the demonstration of mechanical integrity through the historical absence of contamination. Some commenters urged the Agency to rely on annular pressure tests; others disagreed. Some argued that the Director be given the discretion to specify which test he found acceptable as a demonstration of mechanical integrity. Some objected to the proviso that the Administrator approve the use of tests other than those listed in § 146.08. Others urged that such additional tests as the Director approves should be listed in the *Federal Register* for the use of others.

The majority of commenters did seem to agree in three areas. Most commenters urged the elimination of the words which seemed to require the use of more than one test to demonstrate the absence of significant leaks. Many commenters also found some fault with one or more of the tests specified by EPA in this section. Finally, in response to a request for comments in the preamble, many commenters supported the idea of a sampling approach to mechanical integrity rather than a requirement for universal demonstration.

EPA has carefully considered these comments and requested its consultant to conduct further technical analyses. Based on this work, EPA has decided to make the following changes in the final version of § 146.08.

First, EPA agrees that in order to demonstrate the absence of significant leaks in the casing, tubing, or packer of a well, any one of the specified tests is sufficient and has, therefore, eliminated the term "some combination."

Second, the analysis performed for us by Geraghty and Miller, Inc. suggested that the eight tests proposed as methods for demonstrating the absence of

significant leaks were either incorrectly cited, redundant, or not particularly reliable in demonstrating the absence of leaks. Consequently, the final regulations retain only two of the eight tests listed in paragraph (b) of the proposed § 146.08. These are the monitoring of annular pressure and pressure tests with fluid or gas.

Third, with regard to the listed tests to establish the absence of significant fluid movement in the well bore, the cement bond log, sonic log, density log, and dual neutron log have been eliminated, leaving temperature log or noise log as the specified tests. The basis for this decision is again the analysis conducted by the Agency's consultant.

Fourth, the requirement that the Administrator approve the use of tests other than those specified in § 146.08 has been retained, but in a different form. The use of alternative tests to demonstrate mechanical integrity is considered to be a major modification of the State program and must be treated as such under § 123.13. Two further points are worth discussing regarding mechanical integrity. The public comments and the work of our own consultant have raised some questions with regard to the reliability of historical well records to demonstrate the absence of fluid movement in the well bore. As a result, well records are no longer considered an acceptable method of demonstrating this aspect of mechanical integrity in the case of Class I and III wells. The use of well records has been retained for Class II wells because of the large number of wells in the Class and the statutory provision not to unduly interfere with or impede oil or natural gas production. However, the requirements for Class II wells will be subject to a mid-course evaluation. As one part of this evaluation, a sample of Class II wells, for which well records were used to demonstrate the absence of significant fluid movement in the well bore, will be required to perform the specified tests as well. This procedure will provide a comprehensive assessment of the reliability of well records and will provide a factual basis for future Agency decisions on whether to expand or eliminate the acceptability of well records to demonstrate mechanical integrity.

Finally, the preamble to the repropose Part 146 (44 FR 23743-4) solicited comment on the possibility of requiring only a sample of wells, rather than all, to demonstrate mechanical integrity. Although many commenters supported this concept, the final regulations do not include any sampling approaches to the demonstration of

mechanical integrity. Rather, the Agency decided to combine a test of the effectiveness of sampling with its decision to accept well records as a method for demonstrating the mechanical integrity only of Class II wells.

E. Area Permits. The 1979 version of the regulations proposed an area permit which would allow a number of wells of a similar purpose and construction under the control of a single owner or operator to be authorized by one permit. While most commenters approved this concept, they pointed out that the manner in which several sections of the proposal were worded seemed to imply that requirements would still have to be fulfilled on a well-by-well basis. One example of this was the information to be submitted in support of a permit application.

EPA agrees with this criticism and has clarified Part 146 throughout to make clear that a single permit for a number of wells can be applied for and obtained on an area basis. Section 122.39, dealing with area permits, has also been expanded to clarify the regulatory intent in this regard.

F. Logging and Testing Requirements. The sections of the 1979 proposal that received the most extensively adverse comments were the parallel requirements for Classes I, II, and III to conduct certain tests during the drilling and construction of wells and to report the information to the Director. Almost all commenters felt that specifying the actual logs and tests to be used was inappropriate, and, in most cases, overly inflexible. Upon consideration, the Agency agrees. These parallel sections for Classes I, II, and III have been changed. Final Part 146 requires deviation checks, but only for wells constructed with the use of pilot holes and reaming techniques. The Director is given discretion to specify the other logs and tests that may be required based upon the availability of similar data in the area of the drilling site, the construction plan and the need for additional information that may arise from time to time as the construction of the well progresses.

G. Control of Injection Pressures. The proposed regulations required the Director to establish limits on the injection pressure at the wellhead for Classes I, II, and III. In the case of Class I, the surface pressure was to be calculated so that the bottom hole pressure during injection did not propagate fractures in the injection zone and did not initiate fractures in the confining strata. For Class II, the surface pressure was to be calculated only so that the bottom hole pressure did not

initiate fractures in the confining strata. Because of the special nature of Class III operations, the injection pressure at the wellhead was to be controlled so as to prevent the migration of fluids into underground sources of drinking water.

Several commenters suggested that there be no restrictions on injection pressure. Others offered specific alternatives as to how injection pressure should be controlled and what it should be designed to prevent. In particular, representatives of the oil and gas industry argued that the wording of this requirement could cause the loss of oil reserves valued at approximately \$60 billion nationwide.

Upon further consideration of this requirement, the Agency finds that the original intent of these requirements was appropriate. However, two points of clarification are appropriate to resolve the problem pointed out by the commenters. First, in the final Part 146 the terms "injection zone" and "confining zone" are defined to include a single formation, part of a formation, or a group of formations. The regulatory concern of the Agency is that between the underground source of drinking water to be protected and the injection zone, there be a relatively impermeable barrier which is not breached by the injection pressure. This barrier may be composed of a single formation or a group of formations. Secondly, the proposed regulations used the term "bottom hole pressure" inappropriately. Because the friction loss across the perforations of the casing, the injection pressure in the formation is not equal to the bottom hole pressure within the casing. The concern of the Agency is with the pressure in the formation, and the final regulations have been changed to require the calculation of pressure at the well-head so as to produce an acceptable pressure in the injection formation as opposed to the casing at the bottom of the hole.

III. Changes in Individual Well Class Requirements

A. *Class I.* In the original 1976 proposal, the Agency had suggested a 5-year term permit for all classes of wells regulated under the UIC program. In response to extensive comments, the 1979 reproposal substituted lifetime permits for all classes to be regulated by permits. To balance the authorization of these practices for their entire life, Part 122 established extensive review, modification, and revocation and reissuance requirements. Most commenters found these requirements to be confusing and believed them to be inappropriately extensive.

In the final Consolidated Permit regulations, the Agency decided to move in the direction of term permits. Hazardous Waste Management program permits under RCRA as well as Class I permits under UIC will be issued for a period not to exceed 10 years. There are several reasons for this decision. The fluids injected into Class I wells, in many cases, are expected to pose a high degree of risk for the environment. Therefore, a greater degree of regulation is considered appropriate. Furthermore, Class I wells are more likely to be the group of facilities that will require multiple EPA permits since many of them are used at industrial sites where hazardous waste may be generated and surface discharge of waste also occurs. Term permits for Class I wells will ease the difficulty of consolidating and integrating various EPA permits to the same owner or operator.

To balance the shorter permit term, the consolidated permit regulations now provide the permit holder greater security during the term of the permit by restricting the reasons for which the permit may be reviewed, modified or revoked.

B. *Class II.* In addition to the changes affecting Class II wells discussed above, several additional changes for Class II wells are reflected in the final Part 146 regulations. The first of these is a change in the casing and cementing requirements for existing wells. In the original proposal of 1976, the Agency had required that all injection wells must be cased and cemented to protect drinking water sources containing up to 3000 mg/l of TDS. A number of commenters pointed out to the Agency that such a requirement was impractical and onerous. Since there is a rough correlation between depth and the concentration of TDS in ground water, a requirement for casing and cementing to protect levels of TDS higher than previously protected essentially means that an injection well will have to be cased and cemented to a greater depth.

Based on analysis undertaken after the 1976 proposal, the Agency agreed with the commenters that in many, if not most cases, it is impossible to extend the casing in an existing well. While it is possible to add cement to a well, EPA's consultants estimated that the cost of such a requirement in existing Class II wells could run upwards of \$20 billion. However, in existing injection fields, there was some question as to the environmental benefit of protecting aquifers which had not been protected previously.

As a consequence, in the 1979 reproposal, EPA included § 146.22(c). This section granted the Director the

discretion not to apply the Class II casing and cementing requirements to new or existing wells in existing injection fields under three conditions: (1) That State regulations for the construction of injection wells existed prior to the State UIC programs; (2) that such requirements had been applied to the injection wells in question; and, (3) that the injection wells did not cause a significant risk to the health of persons using the impacted USDW.

EPA's intention in this section was to alleviate the casing and cementing burden for existing Class II injection wells. The Agency believed, however, that some restrictions on the discretion of the Director were appropriate. For example, the Agency did not want to condone every casing and cementing practice, regardless of its potential for contamination, or to force the Director to authorize every injection well even if it posed a significant risk to the health of persons.

Commenters on the 1979 reproposal maintained that such a grant of discretion to the Director, with its limitations, did not really solve the problem. A major concern seemed to be that a number of States do not or did not have applicable casing and cementing requirements which would satisfy the conditions of proposed § 146.22(c).

These final regulations have been changed to clarify the relief that the Agency intended to grant. Final § 146.22(c) states that the Director need not apply the casing and cementing requirements of Class II if: (1) An existing or newly converted injection well in an existing field is in compliance with whatever State requirements were applicable to that field at the time the well was constructed, and (2) the injection will not cause the movement of fluid into an USDW so as to create a significant risk to the health of persons.

Newly drilled injection wells in existing fields are to comply with the requirements the State applied to that field prior to the effective date of the UIC program (§ 146.22(d)), and may not create a significant risk to the health of persons. If a State had no requirements for casing and cementing, the Director, in accordance with § 146.22(e), is to file a plan as part of his State program application which describes the casing and cementing requirements he proposes to set for wells in existing fields. If EPA approves, the State program becomes effective, and those will be the requirements to which injection wells in existing fields must conform.

Class II injection wells in existing fields will, however, have to

demonstrate the integrity of such casing and cementing as they have.

The second change in Class II requirements concerns the conversion of wells, i.e., the practice of creating a new injection well by converting a well that had been drilled for other purposes. Many commenters pointed out that newly converted wells would have the same problems in meeting more extensive casing and cementing requirements as existing injection wells. Consequently, the application of the full Class II construction requirements to all new wells, including newly converted wells, was equivalent to prohibiting the practice.

The Agency agrees with these comments, and does not intend to prohibit the practice of converting existing wells. Consequently, newly converted wells have been included in final § 146.22(c) and (e). Whereas the proposed § 146.22(c) was limited to existing injection fields, the final relief applies to all existing fields, including those being converted to injection. Thus, the intended relief has been made available to converted wells also.

A third change concerns Class II reporting and monitoring requirements. A number of commenters pointed out that in many cases (particularly in the case of unitized enhanced recovery injection fields) monitoring is now conducted, but not on a well-by-well basis. The Agency has reviewed this question and has decided that no particular benefit is to be served by insisting on monitoring and reporting on an individual well basis, particularly since in many cases, such wells will be regulated under an area permit. Consequently, the final regulations now allow enhanced recovery injection wells to be monitored on a field basis, and the results of monitoring to be reported to the Director on the same basis.

Finally, in reviewing these regulations for promulgation, the Agency became aware of a potential problem resulting from the estimated time which might be consumed in processing permits for new wells. In many cases, the ability to produce from a new well may be contingent upon the availability of an injection well for disposing of the brine produced with the oil or gas. In existing fields, this is not expected to be a serious problem because disposal alternatives are expected to be available. However, in the case of wildcat explorations in new areas, fewer alternatives for disposal are expected to be available. Therefore, the production from a new well may have to be delayed until a permit for the construction and operation of a salt water disposal injection well is

obtained. Based on our analysis, such delays could represent significant costs in terms of delayed oil and gas production.

To resolve this problem, § 122.40 of the consolidated permit regulation has been expanded. In addition to cases where imminent and substantial endangerment to human health exists, or cases in which a substantial and irretrievable loss of oil or gas resources will occur, a temporary authorization to construct and operate a salt water disposal well may be granted to avoid a substantial delay in oil or gas production. In such cases, an application for a permit must be filed, and the emergency authorization may be given until the Director acts upon the application.

C. Class III. In the preamble to the 1979 proposal of Part 146, the Agency gave notice that it had received extensive comments on the Class III requirements originally proposed in 1976. As the preamble noted, a number of the suggestions offered in response to the original proposals had been incorporated in the reproposal. However, as the preamble went on to state, (44 FR 23746) the Agency was continuing to evaluate alternatives for subcategorizing Class III requirements and was soliciting public comment on some additional fundamental changes. The public comments received on the 1979 reproposal urged the Agency to make some of these changes. The Agency agrees and has extensively revised the requirements for Class III.

Some of the following changes have already been discussed earlier in this preamble, but their impact on Class III is worth reviewing here. First of all, § 122.31(d)(2) of the final Consolidated Permit regulations lists as a specific exclusion, those wells which fall outside of the territorial waters of States. The rationale for this exclusion is that the Safe Drinking Water Act intended the UIC program to be a State and not a Federal program. When EPA promulgates and administers an UIC program, it does so in lieu of the State. Therefore, the Agency has judged it inappropriate to assert original Federal jurisdiction over offshore wells that operate beyond the territories of States. This exclusion exempts certain Class III operations from the coverage of these regulations.

A second important change is that the final § 146.04 now allows the Director to exempt from protection as underground sources of drinking water, those aquifers overlying the site of a Class III operation subject to subsidence or catastrophic collapse. This provision for exempting aquifers should be read together with

final § 122.43 which states, that in cases where an injection well is not into, through, or above an underground source of drinking water, the Director may ease the conditions that he applies to a particular injection well or operation, provided that such eased requirements do not increase the risk of migration of fluids into underground sources of drinking water. This combination of provisions should make it possible to ease the burdens for Class III operations in a number of cases.

Third, one of the concerns of the comments on Class III was that the requirement that no new wells could begin to operate until they had been authorized by permit, could lead to a temporary disruption of operations while the permit was being processed. As in the reproposal, final § 122.37(a)(1) provides that existing Class III operations may be authorized under a rule until a permit is applied for and granted. However, the Section now also specifies that a Class III operator may continue normal operation, including the construction and operation of new wells, under the rule as long as he is in compliance with all applicable requirements.

Fourth, commenters were also concerned about the requirement that even under an area permit the prior approval of the Director had to be obtained before a new well could be placed into operation. As discussed above, the conditions for an area permit have been clarified in general. In addition, final § 122.39(c) now specifies that new wells may be constructed and operated under an area permit without prior approval as long as the new wells are in compliance with permit conditions, the owner or operator notifies the Director according to procedures established in the permit, and the cumulative effect of new well construction has been evaluated by the Director previously. The Agency believes that the four changes listed above should help to resolve many of the problems pointed out in the public comments.

One of the major areas on which public comment was requested in the preamble to the 1979 reproposal, was whether or not the technical requirements for Class III wells should be subcategorized. The commenters on the regulations overwhelmingly favored this course of action. However, the comments were less helpful in suggesting practical ways in which this could be done. To resolve this problem, the Agency has done considerable additional analysis to review Class III injection facilities from the perspectives

of current prevailing practice, existing regulatory requirements and potential environmental consequences. (See report of Geraghty and Miller.)

Our review looked at 9 Class III practices: Frasch sulfur mining; the solution mining of uranium, salt, and copper; in-situ combustion of oil shale, coal, lignite, and tar sands; and the extraction of geothermal energy. The similarities and differences of these nine groups of wells were compared with respect to a number of parameters. With regard to potential environmental impact, for example, 6 of the 9 practices inject into zones that may contain aquifers that would qualify as potential underground sources of drinking water under the UIC definition. In 8 of the 9 practices, injection normally occurs through overlying aquifers which would also meet the definition. With the exception of geothermal energy wells, injection pressures tend to be relatively high, and, with the exception of the Frasch process, the produced fluids could be considered hazardous in that they contain at least heavy metals. In 7 of the 9 cases, subsidence or catastrophic collapse is expected to accompany the operation.

The review of existing State controls and current practice also revealed more consistent similarities than consistent differences among these 9 types of practices. Based on this analysis, EPA has chosen not to establish requirements by subcategory of Class III.

The following changes have, however, been made in the requirements for Class III. With regard to construction requirements, the new casing and cementing standard to protect underground drinking water is applied only to new wells since a requirement for additional casing and cementing for an existing well with a life expectancy of a few months would make little sense. Existing injection wells used in the solution mining of salt and the recovery of geothermal energy, which tend to have a longer useful life, would, however, have to demonstrate mechanical integrity. The requirement for the use of corrosion resistant materials has been retained. However, it should be noted that this does not necessarily mean fiberglass, 316 stainless steel, or other exotic materials. It only means that the material used in the well must be adequate to meet the design life of the well. The performance history of the material under field conditions would be an adequate basis upon which to decide the appropriateness of construction materials. Logging and other testing requirements have already been

discussed above. Deviation checks are required only in cases where construction involves a pilot hole with reaming. Other appropriate logging and testing is to be specified by the Director.

With regard to operating requirements, all new wells would have to demonstrate mechanical integrity before injection is begun. In the case of existing injection wells, only those with a longer useful life, such as the injection wells involved in the solution mining of salt and the production of geothermal energy would have to make an initial demonstration of mechanical integrity. Similarly, the periodic demonstration of mechanical integrity will apply only to the wells with longer life, i.e., salt and geothermal wells. The requirement for 5 monitoring wells has been removed, and monitoring requirements are now stated in terms of the objectives to be achieved. In the case of operations which inject into a formation which contains water with less than 10,000 mg/1 TDS, the requirement is that monitoring wells shall be completed into the injection zone and into any overlying USDWs. The monitoring wells shall be located in such a fashion as to detect any excursion of injection fluid outside the mining area. If the operation may be affected by subsidence, the monitoring wells shall be located so they will not be physically affected by the subsidence. In addition, in the case of injection wells which penetrate an underground source of drinking water in an area subject to subsidence, an appropriate number of monitoring wells is required to be completed into the underground source of drinking water to detect any migration of fluids. Again, the wells shall be located in such a fashion as to detect any migration and to be outside the physical influence of subsidence.

As noted above, the requirements have been clarified in a number of places to make them consistent with the use of area permits. For example, the information to be submitted to the Director specifies that this must be done only to the extent of establishing an adequate picture of the ore body and the subsurface geology in the mining site, but is not necessarily required in the case of each and every well.

The area of review requirement has been retained as proposed. This requirement, however, is not expected to place any undue burdens on the owner or operator. It is expected that the injector already has sufficient economic incentive to minimize the unintended leak of injection or produced fluids from the mining site. Furthermore, it should be noted that corrective action in the

area of review is required only to preclude migration into drinking water sources. In cases for example, where the aquifers overlying the ore body have been designated to be exempted aquifers no corrective action may be required.

Finally, the final regulations have chosen to apply only limited aquifer restoration requirements on Class III as discussed earlier in this preamble.

D. Class IV. The coordination of RCRA and SDWA authorities in the regulation of Class I and Class IV wells used to inject hazardous wastes has been discussed earlier in this preamble. As stated there, the Agency has decided to require the operators of such wells to obtain interim status and to comply with the standards in 40 CFR Part 265 until the applicable State UIC program becomes effective.

In the final regulations, all wells which are used to inject "hazardous wastes," as defined under RCRA, are grouped into Classes I or IV. Standards for Class I wells have already been discussed above. Section 122.36 establishes, on an interim basis, a prohibition, also required for approvable State-administered programs, against the injection of hazardous waste directly into underground sources of drinking water. The prohibition is effective six months after the effective date of a State UIC program. Requirements applicable to other Class IV wells—those which inject above, but not into, USDW's—are reserved. Also reserved are additional requirements (for example, monitoring and retention of records) for Class IV wells injecting into USDW's.

Section 122.45 establishes additional requirements for operators of wells through which manifested hazardous wastes are injected. They apply to Class I wells and will apply to Class IV wells as final standards are established. This section essentially requires that the operator of such well comply with selected requirements established for hazardous waste management facilities under 40 CFR Part 122 Subpart C and 40 CFR Part 264.

The proposed standards for wells used to inject hazardous waste (122.45, 44 FR 34285, June 14, 1979) provided for a ban on the construction and operation of new Class IV wells, and a three-year phase-out of existing ones. The proposal would also have required that wells used to inject hazardous waste comply with the manifest and record-keeping requirements of the hazardous waste management regulations.

The final regulations reflect several changes from the proposal. First, the definition of Class IV has been narrowed. The proposal required only

that: (1) The well be owned or operated by a generator of hazardous waste, or the owner/operator of a hazardous waste management facility; and, (2) that the injection be into or above an USDW in order to be included in Class IV. Commenters correctly pointed out that this definition could embrace wells that were not in fact used to inject hazardous waste. This condition has now been added to the definition of Class IV. The definition also clarifies that the injection has to be "into or above a formation which, within one-quarter mile of the well, contains an USDW" (§ 122.32). Conversely, the injection of radioactive waste has been added. (See discussion above.)

The *second* major change from the proposal is that the requirements for Class IV wells, other than those injecting hazardous wastes into an USDW, are reserved. There are several reasons for this decision. While few commenters questioned the basic premise underlying the proposal, some questioned whether, at least in some cases, the migration of fluid into an USDW would in fact cause any adverse effects either on drinking water supplies or human health. Other commenters suggested that a well should not be banned if it overlies a deep or remote USDW which it is not likely to contaminate. As noted above, commenters also indicated their belief that the definition of Class IV was too broadly drawn, and that, therefore, the proposed standard was unnecessarily protective. The Agency has reviewed these comments and is mindful of its obligation to proceed with extraordinary care before imposing an absolute ban on any practice. The Agency's concern in fashioning the proposal was to afford protection to drinking water sources. The Agency is not contemplating any changes which would sacrifice or endanger drinking water sources people rely on. Furthermore, wells injecting hazardous wastes are also subject to RCRA which mandates a broader set of environmental concerns than drinking water. Nevertheless, there may well be portions of aquifers so deep or remote that they may never serve as drinking water sources, or conditions under which a particular injection may not have an impact on the quality of the drinking water source.

A further reason for the current approach is that regulation under RCRA and SDWA touch at several points. Facilities under Class I and Class IV overlap the class of facilities designated under RCRA as hazardous waste management facilities. It is, therefore, appropriate that technical standards

under RCRA and UIC be consistent, to the extent allowable under the governing statutes, for facilities capable of causing a similar degree of environmental risk.

EPA has decided to defer issuance of permitting standards for HWM facilities until the Fall of 1980. Adoption of UIC standards now for Class IV wells could prove misleading to the States and the public because EPA might decide later this year to revise the standards to reflect policy decisions made in connection with RCRA standards. The best course is to defer the technical standards for Class IV wells which inject above USDWs until this Fall. Accordingly, we now solicit further comment on requirements for Class IV wells.

EPA has under consideration several options which would allow Class IV wells to inject, in certain circumstances. In order to assist commenters, these options are described below. After consideration of comments, EPA will publish regulations in the Fall of 1980 amending either 40 CFR Part 122, Subpart C, or 40 CFR Part 146, or both. At that time, EPA may decide to prohibit all Class IV wells as proposed, adopt any of the options discussed below, or adopt any combination or modification of the options which appears justified based upon the record, including comments received.

The definitions of an USDW and the term "endangerment" are discussed above in detail. For the proposed regulations, EPA adopted a conservative approach to the designation of USDWs. Within this regulatory approach, two alternative methods suggest themselves for expanding the range of allowable Class IV practices. The first is to attempt a more precise distinction between ground water in general and ground water that serves or can reasonably be expected to serve as a source of drinking water. Option A takes this approach.

A second possible approach is to attempt a more precise definition of the circumstances under which the presence of contaminants in an USDW may or may not cause a system to exceed national primary drinking water (NPDW) standards or otherwise adversely affect the health of persons. Option B takes the latter approach.

Option A. This option would entail modification of the definition of a USDW to decline to protect USDWs in areas adequately served by other sources. EPA is aware of areas of the country which are underlain by aquifers containing immense quantities of useable fresh water, or where surface water supplies are so plentiful that they

could reasonably be expected to supply all foreseeable needs for drinking water. In such cases, EPA is willing to consider a policy which would authorize injection through Class IV wells.

In this approach, an additional basis for exemption could be added to § 146.04 that would allow the Director to decline to protect an aquifer or its portion if it "otherwise cannot reasonably be expected to serve as a source of drinking water." To justify such an exemption, the Director could be required to consider the following factors:

- Present and future availability of alternative sources of drinking water;
- Future population growth and land use patterns in the area; and
- The expected growth in the demand for drinking water.

In keeping with the revised definition noted above, such wells would fall under Class I because they would inject into exempted aquifers (i.e., not into, through or above an USDW). Injectors would apply for permits with a duration of up to ten years as specified in 40 CFR Part 146 Subpart B, with one exception. The applicant would be required to make a showing that the injection would not impact aquifers or portions of aquifers protected as USDWs. Such a showing would involve a demonstration that the injection zone is not in hydraulic connection with or that the natural flow from the injection zone is away from protected USDWs.

The application would be processed as any other Class I permit application. Under § 122.43, the Director would have the discretion to require such permit conditions as he believes necessary to protect USDWs.

Option B. This option would recognize that the injection or presence of contaminants in an USDW may not necessarily lead to drinking water supplies exceeding the NPDW standards or adverse effects on the health of persons. Based on this rationale, a more liberal approach could be taken to regulating Class IV wells if the applicant could demonstrate that the injection: (1) Is environmentally the most acceptable method of disposal; and (2) would not contaminate the portion of the aquifer from which water is drawn for drinking.

Under such an approach, the standard that the applicant would have to demonstrate would be that:

- Technology for safe disposal is not available, taking costs into account;
- Disposal by injection will be less harmful than use of other available means; and
- Technology and other means will be employed to reduce the volume and toxicity of wastes.

The applicant would be required to demonstrate that the proposed injection is the most environmentally acceptable alternative available considering technology and the cost of:

- Trucking to approved site;
- Pretreatment prior to injection;
- Treatment and surface discharge;
- Pretreatment and discharge into POTW;

- Construction of a Class I well;
- Incineration; and
- Segregation of streams and/or reduction in flow.

He would also have to demonstrate that anticipated ground water impact will not adversely affect the health of persons or violate NPDWs based on the following information:

- Injection volume and pressure;
- Life of operation;
- Depth of well;
- Direction of ground-water flow;
- Proximity to use;
- Monitoring up-gradient and down-gradient;
- Geological and hydrological data; and
- Closure plan.

There would be certain common elements under both options. Injectors would be required to obtain a permit to operate a Class IV well within one year of the effective date of the State program or close. Permits could be for a duration of 10 years, and new wells would be subject to the requirement in § 122.33 that a permit be obtained prior to the construction of a new well.

Similarly, there are certain common questions with regard to implementation under either option. The Agency solicits specific, detailed comments on these questions: *First*, do factual circumstances exist in which EPA should allow injection of hazardous waste into or above an underground source of drinking water? *Second*, if so, what information should be required of the applicant to show that the injection will not endanger drinking water sources, and what criteria should the Director use in granting or denying permits? *Third*, should new and existing Class IV wells be treated differently or alike? *Fourth*, should the decision to allow the use of a Class IV well be made as part of a statewide or regional plan (e.g., Sec. 208, land use, RCRA Sec. 4007 solid waste plan, UIC program application) or as part of the individual permit decision? *Fifth*, what factors should be considered in subdividing aquifers into relatively confined exempted areas and USDWs? *Sixth*, what procedures should be imposed to ensure full public participation in decisions to allow injection through Class IV wells? *Seventh*, what kinds of

post-closure care requirements (monitoring, third-party liability, use restrictions) should be imposed on Class IV well operators? *Eighth*, are the authorities under SDWA and CWA sufficient to prevent the potential impacts of such injections or should RCRA authorities be invoked to meet environmental concerns such as aquifers discharging to streams and surface impacts on vegetation?

E. Class V. EPA received a number of comments with respect to Class V, suggesting that the two years allowed for the completion of an assessment and submission of State recommendations to EPA was insufficient. The Agency agrees with these comments. Consequently, these final regulations now allow the State three years instead of two years to complete the assessment of Class V wells and to submit recommendations for further regulation to EPA.

Amendments to Part 122

In the process of preparing the final Part 146 regulations, it became apparent that certain portions of the final consolidated permit regulations (45 FR 33290, May 19, 1980) would have to be amended to conform to the Agency's final decisions with regard to the UIC program. Four sections of Part 122 are amended as a part of this promulgation. This procedure is intended to avoid major inconsistencies between Parts 122 and 146. It is not intended to preclude further amendments that may be necessary, or to substitute for technical corrections (e.g., faulty cross references) of the consolidated permit regulations which the Agency still plans to make in the near future.

Section 122.18(c)(4)(ii). This paragraph in the final consolidated regulations required the Director to provide the Administrator with the necessary information to conduct a mid-course evaluation of the corrective action requirement as it applied to Class II wells. The Agency has decided to expand the mid-course evaluation in three ways: (1) It is to apply to Classes I and III as well as Class II; (2) it is to cover mechanical integrity in addition to corrective action; and (3) States are to provide the information every six months during the first two years of program operation rather than once at the end of two years. The amendment conforms the reporting requirement with this decision.

The Agency decided upon this course of action because we anticipate that an expanded mid-course evaluation will yield reliable information earlier than the promulgated scheme as a basis for any refinements in the UIC program

requirements. This decision is discussed more fully as part of the evaluation plan described later in this preamble.

Section 122.37. This section detailed the requirements applicable to the authorization of injection wells by rule. It is revised to clear up some possible ambiguities with regard to the requirements applicable to certain types of rules. Specifically, paragraph (b) of the section may have raised questions with regard to the responsibilities of Class V injectors. Paragraphs (a) and (b) of the section have been revised extensively to clarify the Agency's intent. Paragraph (d)(1), relating to the contents of the injection well inventory is also amended. The current text inappropriately references § 146.52 which is a requirement for Class V. The revised text enumerates the information required on the national form for the inventory of injection wells (OMB #158-R0170), but does not change the substance of what is required.

Section 122.41(e). Paragraph 122.42(f) requires applicants for permits to submit a plan for plugging and abandonment, and specifies that the Director shall incorporate the approved plugging and abandonment requirements as conditions of the permit. The Agency chose this course of action because its concern for the proper abandonment of wells led it to establish such requirements as enforceable permit conditions. However, the permit terms for the UIC program may be long: up to ten years for Class I and up to the life of the well or facility for Classes II and III. Abandonment plans filed with the permit applications may easily be out of date by the time an injector is ready to close his well or facility. For the protection of both the injector and the environment, therefore, this requirement is amended by requiring the permittee to submit an updated abandonment plan along with his 180-day notice. The Director is to review the updated plan, revise the relevant permit conditions as appropriate, and grant approval for the permittee to proceed with plugging and abandonment (see §§ 146.10, 146.14(c), 146.24(c) and 146.34(c)). Section 122.17(f) is amended to allow the permit to be modified to reflect this new plan as a minor modification.

Regulatory Analysis

The regulatory analysis consists of five basic sections: economic and financial profiles; alternatives considered; costs to industry and the States; impacts on the production of oil; and economic impacts on firms, regions and the economy. The cost section was entitled "Economic Impact" in the preamble to the proposed regulations. It

has been revised to show current estimates as well as to describe the reasons for change from the earlier analysis which appeared in the preamble. EPA's consultant did not include the cost associated with wells producing only gas because the percentage of injection wells associated with such wells is small in comparison with injection wells related to oil production.¹ Although the cost estimate is somewhat lower than would have resulted, had gas wells been included, EPA notes that other conventions which were adopted in the cost analysis tend to introduce possible overestimates in the overall cost of the program. To illustrate, as a result of the mid-course evaluation, changes might be made to the Regulations which would substantially reduce the cost to operators of determining the mechanical integrity of wells and performing remedial action.

Nevertheless the cost of the Regulations have been estimated as if there would be no relaxation of these requirements. In addition the Regulations allow, in 40 CFR 122.22(b)(3), the relevant authority to accept limited injection pressure in lieu of corrective action, if it can be demonstrated that the pressure of the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. Nevertheless, in estimating the cost of compliance, it was assumed, in all cases, that corrective action entailed physical repairs rather than pressure limitation. This assumption leads to an overestimate in the cost of the program.

Economic and Financial Profile

Overview. This section examines the impact of the regulations on operators of Class II and III wells. The relatively large number and dispersion of Class I, IV, and V wells among different industries precluded investigation of the economic impacts of regulation of these classes of wells.² However, the aggregate cost to operators and States have been included in the cost estimate.

On the whole, the impact of the Regulations on operators of Class II wells is expected to be relatively minor. It is estimated that a loss of crude production of about 13,000 barrels per day will result, which represents less than half of one percent of U.S.

production at 1977 price and profit levels.³ On a regional and producer level impacts will be more variable, depending upon the relative proportion of stripper wells, average stripper well production, company size and past construction practices. It is anticipated that operators in Illinois and the Mid-continent and Appalachian areas will be affected to a greater extent than other operators because these areas are characterized by poor completion practices and a large number of abandoned wells.⁴ Since production from stripper wells in these regions is relatively low, the net effect of the regulations may be the closure of those wells which produce very small amounts of oil but are likely to be the ones having potentially the greatest adverse impact on underground sources of drinking water.

Similarly the regulations will have no significant impact on Class III operators because compliance costs are relatively small, and the firms which engage in these practices are generally diversified and in sound financial condition.⁴

Oil and gas.⁵ The oil and gas producing industry is comprised of a large number of firms but is dominated

by a handful of vertically integrated corporations commonly known as the "majors". The majors engage in a full spectrum of activities including exploration, development, production, refining, transportation and marketing. The balance of firms in the industry, commonly known as "independents", are more diverse in structure. Although some independents engage in the same array of activities as the majors, they generally tend to focus on exploration, especially "wild catting".

Concentration in the petroleum industry is moderately high compared to other manufacturing industries. As indicated in table 1 the eight largest firms account for approximately half of industry revenues, which were \$32.5 billion in 1977. Between 1973 and 1977 revenues have more than doubled. Net income, as a percent of net worth, was substantially higher in the five year period since the Arab oil embargo than the previous five year period. Despite the fluctuations in the net income/net worth ratio during the early part of the era ushered in by the embargo, it appears that the events of 1973 have reversed a general decline in this measure of profitability. Profitability appears to be increasing and the current increase in oil prices made possible by decontrol suggests that the trend will continue. (Table 2).

Table 1.—Concentration, Oil and Gas Companies

Firms	1973		1974		1975		1976		1977	
	Revenue billions (dollars)	Percent	Revenue billions (dollars)	Percent	Revenue billions (dollars)	Percent	Revenue billions (dollars)	Percent	Revenue billions (dollars)	Percent
Largest 8	7.6	53	11.4	51	12.6	50	13.6	48	15.0	46
Next 9-32	3.8	26	6.0	27	6.8	27	7.5	26	8.7	27
All Other	3.0	21	4.9	22	6.0	23	7.3	26	8.8	27
Total	14.4	100	22.4	100	25.4	100	28.4	100	32.5	100

Source: Booz, Allen and Hamilton, Underground Injection Control Program . . . , P. II-12.

Table 2.—Profitability of Petroleum Industry

	Net income as a percent of net worth	
	Petroleum production and refining	Total trade
1967	12.8	13.2
1968	13.1	14.1
1969	11.9	13.5
1970	11.0	11.7
1971	11.2	11.7
1972	10.8	11.7
1973	15.6	12.7
1974	19.6	13.5
1975	13.9	13.0
1976	14.8	14.7
1977	14.0	15.0
1978	14.3	15.2

Source: Booz, Allen and Hamilton, Underground Injection Control Program . . . , p. II-14.

Frasch sulfur production. There are three major sources of domestically produced sulfur: (1) Recovered elemental, in which sulfur is produced as a by-product of natural gas processing and petroleum refining; (2) recovered sulfuric acid, in which sulfur is produced as a by-product of copper, lead, and zinc roasting and smelting; and (3) the Frasch process. Production by the Frasch process has declined between 1974 and 1977 while demand and prices have increased (Table 3). This decline is largely due to increases in the cost of heating water used to melt the sulfur, due to sharp increases in the price of natural gas. By the year 2000 it is possible that production by the Frasch

¹ Arthur D. Little, Inc., *Cost of Compliance. Proposed Underground Injection Control Program. Oil and Gas Well*. (June, 1979), p. 19.

² Booz, Allen and Hamilton, Inc., *Underground Injection Control Program. Industry Analysis of Class II and Class III Well Regulation*. (April 30, 1980) p. 1-2.

process will be phased out, with expected increases in demand satisfied from present competing sources.⁶

The production of sulfur by the Frasch process is highly concentrated. In 1978 only five companies operating at ten sites produced sulfur by this method.⁷ These companies have complete control over all phases of the production of sulfur. With one exception they are divisions of diversified companies whose sulfur sales represent, in most cases, a small portion of their total sales. These companies are financially secure, and their earnings outlook has improved owing to the growing demand for fertilizer, which they also produce and market.

Table 3.—Sulfur Industry Data

(Thousands of metric tons)

	1974	1975	1976	1977	1978
Domestic Production—					
Frasch.....	7,901	7,211	6,264	5,822	5,648
Recovered					
elemental.....	2,632	2,969	3,138	3,567	4,088
Other.....	886	1,079	1,305	1,169	1,439
Imports.....	2,150	1,897	1,727	1,977	2,177
Exports.....	2,663	1,352	1,270	1,178	866
Domestic Demand.....	10,906	11,804	11,164	11,357	12,486
Average Annual Price					
Per Metric Ton.....	\$26.42	\$44.91	\$45.72	\$44.38	\$45.17

Source: Booz, Allen and Hamilton, *Underground Injection Control Program*, p. II-6.

Solution Mining of Salt.⁸ About 60% of domestic salt production is by the injection process. Most of the solution mining wells are located on the Gulf Coast, primarily in Texas, Louisiana, and Mississippi. The major demand for salt is by the chemical industry, which uses about half of all salt produced in the U.S. for the production of chlorine and soda ash. Consequently, demand fluctuates with the demand by the chemical industry. About thirty companies produced salt by injection method in 1978. These companies generally employ other methods as well, namely, conventional mining and evaporation of brines.

In general companies producing salt are vertically and horizontally integrated. They tend to be involved in the production of chemicals, oil and gas, minerals, metals and pharmaceuticals. It appears that salt production is of relatively minor importance to these firms.

Solution Mining of Uranium. In 1978, there were ten firms mining uranium by the in-situ process. In general these

firms are large conglomerates with holdings in other minerals, as well as oil and gas production. EPA could not obtain financial information on uranium mining firms because such information is not available. Furthermore, production information is confidential, which makes it impossible to ascertain mine or company output with any degree of precision.⁹ Consequently, it is not possible to provide descriptive economic and financial information on the uranium mining industry in general, or the solution mining component, in particular.

Solution Mining of Potash.¹⁰ Potash is used primarily in fertilizer as the source of potassium. Overall domestic demand for potash has been relatively stable since 1974, but domestic production has been falling as a proportion of total use. In 1965, domestic production represented 93% of demand, but in 1978, only 37%.

There are ten companies which produce potash, but only the Texas Gulf Company uses the solution mining technique. The remaining firms employ conventional mining or recovery from surface brines. As a proportion of total domestic production, the amount represented by the solution mining of potash is minor—1.25%.

Solution Mining of Copper.¹¹ The solution method is used to recover copper from low grade deposits. Presently, there are no commercial in-situ sites. Three marginally profitable solution sites and one experimental site were closed in 1978 due to depressed copper prices. Despite rapid price increases recently these sites have not been reopened.

In-Situ Oil Shale Combustion.¹² There are four projects in various stages of development, but none have progressed to full commercial use. Two of them—the Geokinetics, Inc. site in Utah, and the Equity Oil Co. site in the Piceance Creek Basin, Colorado—are still in the research and development stage. The others—the Rio Blanco Oil Shale Project, and Federal Lease Tract C both in the Piceance Creek Basin—are in the development stage, with burns scheduled for 1980. Even under favorable conditions the latter project, which is the most advanced of all the sites, is not expected to produce any sizeable amount of oil until 1986.

⁸ *Ibid.*, p. II-26.

⁹ Generally, *ibid.*, pp. II-29 to II-32.

¹⁰ Generally, *ibid.*, pp. II-32 to II-36.

¹¹ Generally, *ibid.*, pp. II-36 to II-39.

Gasification of Coal.¹³ The Federal Government has sponsored research designed to demonstrate this technology since 1973, and three privately funded ventures have been organized since 1975. At this time none has progressed to commercial production. The most advanced sites are at the field test stage. The Department of Energy does not anticipate the commercialization of either of the sites it supports before 1987.

In-Situ Tar Sands Recovery.¹⁴ Tar sands are heavy petroleum (bitumen) which will not flow into a well bore without stimulation. Ninety-eight percent of domestic resources are located in Utah. At this time, the technical feasibility of in-situ tar sands recovery is uncertain due to the lack of geologic and reservoir data.

Geothermal Energy.¹⁵ The major use of geothermal energy is in the production of electricity. Such production, amounting to an installed capacity of 663 megawatts, is insignificant as a proportion of total U.S. production. Expansion of the use of this source of energy is hampered by high costs of development, long delays in obtaining permits and relatively high cost compared to generation by use of oil or gas. By 1985 this source may be price-competitive with oil and gas. However, at this time, only a small number of lease holders and owners of geothermal resources have undertaken its development.

Alternatives Considered

The Safe Drinking Water Act requires EPA to develop minimum requirements for effective state programs to protect underground sources of drinking water from the subsurface emplacement of fluids through well injection. The Act, however, also requires the Agency not to prescribe requirements which interfere with or impede the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or any underground injection for the secondary or tertiary recovery of oil or natural gas unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

In recognition of these requirements EPA considered numerous alternatives,

¹² Generally, *ibid.*, pp. II-39 to II-41.

¹³ Generally, *ibid.*, pp. II-41.

¹⁴ Generally, *ibid.*, pp. II-42 to II-50.

⁶ *Ibid.*, p. II-20.

⁷ *Ibid.*, p. II-21.

⁸ For this discussion see *ibid.*, pp. II-26-29.

spanning the range from no regulation at all to stringent levels of protection which would cost industry tens of billions of dollars. The following discussion will provide an understanding of the alternatives which received serious consideration but were eventually rejected.

Through an understanding of the nature of the alternatives and reasons for their rejection EPA hopes to instill an appreciation for the complexity of the problem it faced and for the balance it believes was achieved in the promulgated regulations.

I. Alternatives to Regulation

The promulgated regulations are based on the concept of prevention, which EPA believes reflects the intent of Congress in enacting the Safe Drinking Water Act. Through controls on the siting, construction, operation and abandonment of injection facilities, underground sources of drinking water will be protected from endangerment. An alternative to this concept is an approach which might be termed the "restitution" approach. It entails the creation of a fund, either through insurance premiums or other sources such as general tax revenues, which would be used to rectify any damage to an aquifer. The restitution alternative was not adopted for three reasons. First, it is inconsistent with the preventive nature of the Safe Drinking Water Act which requires EPA to promulgate regulations which contain minimum requirements for effective State programs to protect underground sources of drinking water. Second, the size of such a fund would have to be based upon an estimate of risk of contamination and the future value of the aquifer, both of which are unknown. And finally, even if such estimates were available there is no known technology by which a contaminated aquifer can be economically restored.

II. Alternative Regulatory Provisions

A. Class I.—1. Treatment of nuclear wastes. In the 1979 proposed regulations Class I was defined as "industrial and municipal disposal wells and nuclear storage and disposal wells that inject below all underground sources of drinking water".¹⁶ The final regulations include nuclear storage and disposal wells which inject below underground sources of drinking water in Class V. EPA still considers such wells to require careful control. However, it believes that the control of such wells should be determined as part of the overall review of the disposal of nuclear wastes

initiated under the President's Program of Radioactive Waste management, as described in the Message sent to Congress on February 12, 1980. Therefore, rather than prescribe specific construction requirements which may require modification in the near future, EPA concluded that it would be preferable to assess such wells and fashion appropriate regulatory requirements, in keeping with the President's program, in the future. (Wells which inject nuclear wastes directly into underground sources of drinking water are regulated under Class IV, however).

B. Class II.—1. Casing cemented to the surface. The regulations require that " * * * all new drilled Class II injection wells shall be cased and cemented to prevent migration of fluids into or between underground sources of drinking water" with the specific requirements left to the discretion of the State Director upon consideration of several factors as detailed in 146.22(b). An alternative considered would have required the cementing of surface casing from the injection zone completely to the surface as a way of ensuring that there would be no fluid migration along the exterior of the casing, or communication between water bearing strata. This alternative was not adopted because such a requirement, in EPA's view, far exceeds that which is necessary to prevent fluid movement. EPA believes that such a requirement would have interfered with or impeded the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or underground injection for the secondary or tertiary recovery of oil or natural gas without being essential to assure that underground sources of drinking water will not be endangered by such injection. To illustrate, if the Agency had required full cementing to protect underground sources of drinking water containing 3,000 ppm or less total dissolved solids, EPA estimates the cost to operators would have been roughly \$20 billion over the first five years of the UIC program in 1977 prices.

2. Interstate Oil Compact Commission (IOCC) proposal. The promulgated Regulations do not differentiate between injection, producing and abandoned wells, based upon their age. The IOCC proposed that such a distinction be made as follows:

- a. New wells and wells drilled or completed prior to 1947 would receive new permits based on mechanical integrity, area of review and remedial action;
- b. Wells completed between 1962 and the time the State program goes into

effect would continue under existing permits;

c. Permits for wells drilled or completed between 1947 and 1962 would be reviewed for compliance with standards prevailing since the early 1960's. Permits for wells that generally met the standards would be revalidated. Wells that clearly fall short of the standards would be re-permitted.

Many of the features of this proposal were adopted. New wells may not be constructed and operated without a permit; existing enhanced recovery wells may be operated under rule (although mechanical integrity tests are required to ensure that they remain sound); wells injecting in an existing field need only comply with standards for casing and cementing in existence at the time of drilling of such wells. Hence some of the major features of the IOCC proposal were adopted. It was not adopted in toto because under (b) it would have allowed wells completed between 1962 and the time the UIC program went into effect to be operated even if they were not mechanically sound. While EPA agrees that older wells may be more likely to fail owing to corrosion and other problems, it also believes that many newer wells may be subject to leakage and fluid migration due to the use of cement of insufficient quality, poor workmanship, a corrosive environment, human error, or other factors.

3. Area of review alternatives. Because of the high concentration of producing and abandoned wells in existing oil fields the overall cost to operators of the UIC program is largely determined by the extent of the area of review and nature of testing and remedial action required on wells within it. EPA devoted considerable effort to the identification and evaluation of alternative approaches. In its deliberations, EPA considered:

- a. Applying it to all injection wells, both enhanced recovery and disposal, new and existing;
- b. Applying it to new injection and existing disposal wells;
- c. Requiring the radius to be a minimum of ½ mile of a new enhanced recovery or disposal well if the zone of endangering influence is not determined by the use of the Theis or similar equation;
- d. An ad-hoc area of review, as practiced in Texas and Louisiana, and;
- e. Eliminating the area of review requirement entirely.

Had alternative (a) been selected it would have required that virtually every injection, producing, and abandoned well of record in the United States be examined and, if necessary, either

¹⁶ 44 FR 23740, April 20, 1979.

repaired, abandoned, or reabandoned within five years of the date the program became effective. Considering that there were about 1.2 million abandoned wells of record, 505,000 producing and 119,000 injection wells at the end of 1976, plus a net increase of some 25,000 new injection wells during the first five years of the program, EPA concluded that so comprehensive a requirement would have unduly impeded oil and gas production.

Option (b) was discarded for the same reason. Although fewer wells would have been reviewed within the first five years EPA believed that it would have unduly interfered with or impeded oil and gas production without being essential to assure that underground sources of drinking water will not be endangered. Similarly alternative (c) was rejected for the same reason. Had the one half mile radius for the area of review been adopted, 171,000 producing wells and 302,000 abandoned wells would have been evaluated, and 20,000 repaired. At the one fourth mile radius there is a reduction of some 77,000 producing and abandoned wells in the area of review. At the smaller radius, the number of producing and abandoned wells needing remedial action is approximately 17,000 compared to about 20,000 at the 1/2 mile radius.

The ad-hoc alternative (d) would require the testing and appropriate remedial action to wells in the area of review of a new disposal well only if the regulatory authority received a complaint within the ten days of the filing of a permit application. While its low cost makes it appealing, this option was rejected because it would have provided for remedial action to faulty wells only after environmental damage had become visible.

Alternative (e) was rejected because even though the injection well was sound, other nearby wells could still serve as pathways for potential endangerment.

Radii less than 1/4 mile were not considered because actual computations by EPA of the zone of endangering influence indicate that, in most instances, the appropriate distance is less than 1/4 mile. Setting the radius at 1/4 mile thereby ensures that all wells within the zone of endangering influence will be examined.

4. *Other alternatives to reduce or spread out program costs.* a. Sampling a small portion of wells for mechanical integrity. Testing and reporting the results of mechanical integrity tests on injection wells accounts for approximately \$96 million of total program costs. EPA considered random sampling as an alternative to testing of

all wells. This approach was not adopted because data essential to the design of the sample, e.g., the different sampling strata to sample and expected failure rates, are not available. A random sample would provide an estimate of failure rates but would fail to locate all defective wells.^{16a}

b. *Assessment/Postponement.* This option would postpone the date by which permits are required by about three years while the States planned and conducted an assessment of injection practices. The data base resulting from this approach would then be used to formulate a regulatory program. This alternative was rejected for two reasons. First, the assessment would have required an expensive survey in each state and would not provide a valid test of the area-of-review concept. Second, the program would have been delayed three years, which was judged by EPA to be unacceptable.

c. *Exempting stripper-related injection wells.* Approximately three-quarters of all producing wells are strippers, which are wells producing ten or fewer barrels of oil per day. It appeared that exempting from regulation injection wells associated with strippers would achieve the dual objective of reducing program costs substantially while sparing the least productive wells the burden of the cost of compliance. Unfortunately, the very reason that enables the savings in program costs also weighs against the adoption of this alternative. To exclude three-quarters of all producing wells from any kind of review would undermine the effectiveness of the program for two reasons. First, strippers number among them some of the oldest wells drilled in the U.S. Old stripper wells are not drilled to current standards and are the ones most likely to endanger underground sources of drinking water. Second, because of their numbers and widespread distribution entire regions of the country will be left unprotected if injection wells associated with strippers are exempted.

d. *Exempting injection wells with an open annulus from pressure testing.* The promulgated regulations require pressure testing of all injection wells for casing leaks. Where the annulus is enclosed, the cost of such a test is estimated to be thirty dollars.¹⁷ However, if a well does not have an

enclosed annulus the cost of testing is estimated to be \$1500.¹⁷ Over the first five years of the program the cost of testing wells with an open annulus is estimated to be \$65 million, and affects about 43,000 wells. EPA considered eliminating the testing requirement, but decided to retain it because of the large number of such wells and their potential for widespread contamination.

5. *Other, more stringent alternatives.* As discussed under (1) and (3) above, more stringent alternatives rejected were: Continuous cementing from the injection zone to the surface; area of review for all injection wells, and a half-mile, rather than quarter mile, area of review. Following are three additional alternatives which were considered by EPA. Each would have imposed more stringent requirements than those promulgated:

a. *Continuous monitoring of injection pressure, volume and flow rate.* Unlike the continuous monitoring required for Class I and III wells, such monitoring was considered but rejected for Class II because the injected fluid, being less toxic and corrosive than that of Class I and III wells, does not require constant surveillance. In addition, the Agency believes that the cost of continuous monitoring would have been excessive in view of the potential for harm to human health.

b. *Absolute construction ban without a permit.* In the case of a non-controversial application EPA estimates that the process will require about 105 days over and above current State permit processing times. For wildcat operations EPA believes that such a delay would be particularly expensive and would have unduly interfered with or impeded oil and gas production. Consequently, the promulgated regulations allowed the issuance of temporary emergency permits if it can be demonstrated that "a substantial delay in production of oil or gas resources will occur unless temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an underground source of drinking water."¹⁸

c. *Extending coverage to wells storing hydrocarbons in a gaseous state.* The April, 1979 proposed regulations included all forms of hydrocarbon storage under the definition of Class II.¹⁹ Wells storing hydrocarbons which are a gas at standard temperature and pressure have been excluded from Class II in the promulgated regulations

^{16a} Booz, Allen and Hamilton, *A Study of Sampling Procedures as Applied to the Mechanical Integrity Testing of Injection Wells*. (April 30, 1980), Executive Summary, pp. 1.2.

¹⁷ Arthur D. Little, Inc., *Cost of Compliance. Proposed Underground Injection Control Program, Oil and Gas Wells*. (June, 1979), p. 96.

¹⁸ 40 CFR 122.40(a)(3).

¹⁹ 44 FR 23758, April 20, 1979 and 44 FR 122.34(b), June 14, 1979.

because gas is highly unlikely to result in the chemical contamination of drinking water even if it migrates from the injection zone. In addition such wells may be properly maintained owing to strong economic incentives to prevent loss of the stored gas. These wells have been transferred to Class V for further study.

C. In response to comments that Class III wells were too diverse to be covered by common requirements, EPA undertook a detailed evaluation of their physical characteristics and potential for contamination of underground sources of drinking water in order to determine if subclassification of Class III wells was appropriate.²⁰

The review looked at 9 Class III practices: Frasch sulfur mining; the solution mining of uranium, salt, and copper; in-situ combustion of oil shale, coal, lignite, and tar sands; and the extraction of geothermal energy. The similarities and differences of these nine groups of wells were compared with respect to a number of parameters.²¹ With regard to potential environmental impact, for example, 6 of the 9 practices inject in zones that may contain aquifers that would qualify as potential underground sources of drinking water under the UIC definition. In 8 of the 9 practices, injection normally occurs through overlying aquifers which would also meet the definition. With the exception of geothermal energy wells, injection pressures tend to be relatively high, and, with the exception of the Frasch process, the produced fluids could be considered hazardous in that they contain at least heavy metals. In 7 of the 9 cases, subsidence or catastrophic collapse is expected to accompany the operation.

The review of existing State controls and current practice also revealed more consistent similarities than consistent differences among these 9 types of practices. In addition, the theoretically preferable criterion cannot be translated into operational terms. According to EPA's consultant, "perhaps the most logical way to subclassify the Class III wells, would be in terms of the relative threats to the ground-water environment posed by different practices."²² However the Agency's consultant also concluded that the "... overall threat to the ground-water environment that might be posed by a particular type of injection well in Class III depends to a large degree on the site-specific

hydrogeologic situation."²³ The agency cannot develop consistent National Standards based upon diverse, local, hydrogeologic factors. Therefore, EPA has chosen not to subclassify Class III. However, in recognition of the relatively short service life of wells other than salt solution and geothermal,²⁴ EPA concluded that the mechanical integrity testing requirements for certain existing wells in Class III should be relaxed.

Consequently, prior to granting approval for the operation of a Class III well, the operator is required to demonstrate mechanical integrity only for all new Class III wells and existing salt and geothermal wells. In addition, only the operators of salt solution mining and geothermal wells are required to demonstrate mechanical integrity every five years.²⁵

Two, more stringent alternatives were considered for the abandonment of Class III wells, notably those relating to uranium mining: Aquifer restoration, and containment of injected fluids. The restoration alternative was not adopted because the technology is still in the experimental stage. Since EPA cannot evaluate the effectiveness of this technology it concluded that it was premature to require it now as a National minimum requirement. However the Director is given the discretion to require aquifer restoration on a case-by-case basis.²⁶ As for the containment alternative, the Agency concluded that because of the long decay time of radioactive substances, containment would require monitoring and testing of water quality for hundreds of years, which the Agency does not believe to be administratively feasible at this time.

D. *Classes IV and V.* Four alternative approaches were formulated for regulation of wells which inject directly into or above underground sources of drinking water:²⁷

1. Within the UIC regulations, require a permit program for at least some of these practices;
2. Within the UIC regulations, require the states to assess the threat of contamination from these wells and submit a detailed state plan to EPA;
3. Withdraw consideration of these wells from the UIC regulations and study them in a separate national assessment; and

²⁰ *Ibid.*, p. VII.

²¹ *Ibid.*, p. 8.

²² 40 CFR 146.34(b)(2) and 40 CFR 146.33(b)(3).

²³ 40 CFR 146.10(d).

²⁴ For a full discussion of these alternatives, see Temple, Barker and Sloane, Inc., *Analysis of Cost. Underground Injection Control Regulations. Class I and Class III Wells. Class IV and Class V Wells.* (May, 1979). Part 2, Appendix B.

4. Within the UIC regulations, require state assessment of these wells coupled with regulatory control over the most potentially harmful practices. The main features of alternative number 1 are:

- The Director would have the discretion to ban immediately those categories of practices which present an unreasonable risk to health and to ban, after an appropriate period of time, all categories of practices for which economically feasible alternatives exist;

- The Director would determine, for those practices not banned, which practices in the state should be regulated by permit rather than by rule;

- Exemptions would be allowed based upon criteria such as toxicity and/or volume, hydrogeologic characteristics, and population in the area relying on the affected underground sources of drinking water;

- The Director would impose monitoring, record-keeping and reporting requirements for each permit. In addition, the director would require public notification for each permit before its issuance, and require that the injector periodically show that the well continues to be the best environmental means of disposing of the waste.

This approach would have provided maximum protection of underground drinking water sources within the shortest time frame, and would have been consistent with other Subparts of the UIC regulations. It was not adopted because a substantial effort would have been required to locate individual wells that are typically hidden from view. In addition, it is impossible to argue with certainty that technological alternatives to current practices are economically feasible for all shallow disposal and recharge well practices. Considering the absence of a complete characterization of wells, it is possible that some permit requirements would be established without a thorough understanding of all elements of operations such as volume and toxicity, of injected fluids, costs and alternatives.

The main features of alternative number 2 are:

- The Director would compile an inventory, including number, location, and use of these wells and determine the toxicity and volume of the injected fluids;

- The Director would develop and compile hydrogeologic data such as location of the aquifers, aquifer yield, ground-water quality, ground-water movement and ground-water use;

- The Director would develop data on present and future population and industrialization, emphasizing the dependence upon ground-water and the protection of public health;

²⁵ Geraghty and Miller, Inc., *Development of Procedures for Subclassification of Class III Injection Wells.* (April 30, 1980).

²⁶ *Ibid.*, p. 8.

²⁷ *Ibid.*, p. VI.

• The Director would consider the technological alternatives available to existing practices; and

• The Director would assess the risk to underground sources of drinking water and would submit a State plan to cover new and existing injection wells.

The advantages of this alternative are, the study would be mandatory, being required by regulation; provision could be made for the Director to take action in the event cases of endangerment are uncovered during the course of the study and there would be a greater degree of uniformity in several important aspects of the study, such as scope; methodology; and data quality. The major disadvantages to this approach, which led to its rejection by the Agency, is that it is time consuming and would allow extremely dangerous practices to continue on a widespread basis while the problem was studied further.

The third alternative is similar to the second, except that the study would be voluntary. The same type of information would be collected; however, the alternative would suffer from the same disadvantages as the former alternative. In addition, the Director might not have the authority to ban dangerous practices which are uncovered. Consequently, the Agency rejected this approach as well.

The fourth alternative was selected by EPA. It combines regulation of the most dangerous practices (Class IV) with further study of those believed to be of less immediate concern (generally, those wells in Class V). Under alternative number four, the injection of hazardous wastes directly into an underground source of drinking water after six months following approval or promulgation of any UIC program for a State, is prohibited. The control of injection of hazardous wastes above USDWs is reserved until the Fall.

Cost of Compliance

Most States already regulate the underground injection of fluids in some manner or to some degree. State personnel are already assigned to work on the control of injection wells, and owners and operators of injection wells must meet existing State requirements. Nevertheless, the UIC regulations will cause both States and industry to commit resources to the protection of underground sources of drinking water in addition to their current level of effort.

EPA's best estimate is that these regulations will result in incremental costs of approximately \$775 million, expressed in 1977 prices, to all 57 States and Territories and the regulated community in the first five years of program operation (Table 4 provides a

summary). This estimate includes costs only for developing and conducting the assessment of Class V wells and does not try to guess the impact of immediate closures or the eventual regulatory requirements. In addition, no attempt was made to anticipate the changed requirements that may result from the mid-course evaluation of the area of review requirement, or from the review of a sample of wells which were permitted on the basis of cementing records. This is because EPA does not have a sufficient basis for projecting the number of wells which will require remedial action.

Table 4.—Summary of Five-Year Incremental Costs of UIC Regulation
(In thousands of 1977 dollars)

	Non-recurring	Recurring	Total
Industry:			
Class I	5,025	463	5,488
Class II	585,094	4,006	589,100
Class III	5,698	560	6,258
Class IV	1,100	162,300	163,400
Subtotal	576,917	167,329	744,246
State:			
Class I	875	2,535	3,410
Class II	9,855	7,560	17,415
Class III	709	1,230	1,939
Class IV	389	858	1,247
Class V	7,200		7,200
Subtotal	19,028	12,183	31,211
Total	595,945	179,512	775,457

In this study price levels which existed in 1977 were used to estimate the cost of the UIC program. The use of "constant" prices is a commonly used convention which enables one to ascertain the physical amount of goods and services, or "real" resources, devoted to compliance because it eliminates the influence of changes in prices. For other types of analysis, such as projecting expenditures and revenues in a given year, it would be appropriate to use prices expected to prevail during the time period of interest. If it is desired to express the cost estimates in terms of "current" prices it would be necessary either to project the level of each unit price, or to construct a price index which would be used to convert the aggregate cost estimates from 1977 to other price levels. Such an endeavor is beyond the scope of this analysis. However, in the judgment of EPA's consultant, increases in costs suggest that the annual rate of price level increase for activities associated with oil drilling and production is roughly on the order of 20% per year.²⁸

²⁸ In Geraghty and Miller, Inc., *Development of Procedures and Costs for Proper Abandonment and Plugging of Injection Wells* (April 30, 1980), p. IV-5, the cost of abandoning a 3,000 foot well used either for oil and gas storage or production is \$8,600. In

Consequently a rough estimate of the cost of the UIC program in general, and Class II in particular, in 1980 prices, may be obtained by adjusting costs upward by 50%. The total cost of the Regulations in 1980 prices would be on the order of \$1.2 billion, or about \$230 million per year.

It should be emphasized that the estimate is largely a function of the size of the environmental problem. The cost to industry, in 1977 prices, of carrying out the fixed requirements—permit application, permit issuance, inspection, surveillance, monitoring, testing, reporting, etc.²⁹—is estimated to be \$191 million, or \$38 million annually for the first five years. This is, in a sense, the fixed cost of the regulations. The remainder, \$553 million, is the estimated cost, in the first five years, of repairing leaky injection wells, replugging wells improperly abandoned in the first place, and re-cementing improperly completed producing wells in the area of review. For Class IV, these costs include the pretreatment of hazardous waste and shipment to approved hazardous waste management facilities. These are the variable costs which directly depend upon the number of problem wells. If the environmental problem is more or less extensive than estimated by EPA in this analysis, this portion of the cost would vary accordingly and potentially widely.

Of the total \$775 million estimated cost, about \$744 million falls on industry. The total incremental State burden is estimated to be about \$31 million over five years or about \$6 million annually.

The cost of regulating Class II injection wells, \$569 million to industry over five years, clearly dominates both State and industry costs. However, this class also has the largest number of wells (2 million) potentially affected by the regulations.

The following discussion provides details of the cost estimates by class of well. The sections are organized into industry estimates and State estimates. They also discuss nonrecurring and recurring costs. Nonrecurring costs include such one-time activities as inventorying wells in the area of review, taking appropriate remedial action, and re-permitting existing wells. Demonstrations of mechanical integrity are also treated as one-time costs because the second round of tests will not take place in the first five year

order to estimate the cost of abandonment in 1977 prices, EPA's consultant, Booz, Allen and Hamilton, reduced this to \$5,000, which indicates a growth rate of approximately 20% per year (*Underground Injection Control Program Class II Well Incremental Compliance Cost Refinements*, p. 18).

²⁹ 40 CFR 122.45.

period. Recurring costs include such periodically required activities as monitoring, reporting, and enforcement.

Class I Wells. 1. Industry Costs. A demonstration of mechanical integrity will be required of operators but flexibility is provided in the choice of test for demonstrating it. Unit costs can range from \$5,000 to \$35,000³⁰ per test. The total cost of mechanical integrity testing for the UIC program is estimated to be in the range of \$675,000 to \$4.5 million.³¹

Appropriate remedial work is prescribed for defective wells and may vary from \$17,500 to \$100,000.³² Total incremental repair costs for the class are estimated to range from \$53,000 to \$300,000.³³

The average number of new wells being constructed each year is estimated at twenty.³⁴ Since all States now have permitting requirements at least as stringent as the UIC requirements, new construction will incorporate the new design criteria contained in these regulations and no incremental construction costs are expected to result.³⁵

Additional reporting requirements have been estimated to cost \$300 per well per year for new and existing deep disposal wells.³⁶ Total recurring costs are estimated to be \$463,000 over five years.³⁷

2. State Costs. The regulations require collection and review of data on a quarterly basis for each site subject to the regulations. Six work-hours per submission per site has been employed in the estimation of costs for this activity.³⁸ EPA estimates that the submission of reports to the Agency will require one hour of preparation per site per quarter.

The total costs of the requirements in Class I appear in Table 5. The increase in industry and state costs since the proposed regulations is due to a revision in the number of existing wells, based upon a new survey of the well population.³⁹

Class II Wells. Class II wells include injection wells associated with oil and gas production, and hydrocarbon

storage, except gaseous natural gas storage wells. The conceptual scheme for estimating incremental costs involves the identification of unit costs for the activities required by the proposed regulations and multiplying those by the estimated number of wells requiring each kind of action. Several changes have been made to the cost of compliance based upon comments

received and further analysis performed by EPA. On net balance cost to operators is lower than the previous estimate, primarily due to lower costs of remedial action. This results from the recognition that certain wells will be abandoned rather than repaired. A reconciliation of changes in costs from those appearing in the April 20, 1979, Preamble follows:

Table 5.—Incremental Five Year Program Costs, Class I Wells

[In thousands of 1977 dollars]

	Nonrecurring	Recurring	Total
Industry:			
Mechanical Integrity Test	675-4,725		675-4,725
Remedial Action	53-300		53-300
Monitoring and Reporting		463	
Subtotal	728-5,025	463	1,191-5,488
State:			
Program Development	52-127		52-127
Program Hearings	39		39
Permit Existing Wells	298-593		298-593
Permit Hearings	116		116
Quarterly Review		545	545
Quarterly Report		130	130
Annual Report		50-245	50-245
Enforcement		830-1,615	830-1,615
Subtotal	505-875	1,555-2,535	2,060-3,410
Total	1,233-5,900	2,018-2,998	3,251-8,898

Source: Temple, Barker and Sloane, Inc., *Underground Injection Control Regulations, Analysis of State Program Costs: Class I Wells*. (May 15, 1980) p. 6.

1. Sampling for fluid migration (+\$4.5 million). The proposed regulations permitted the submission of cementing records as a demonstration of mechanical integrity. However, EPA's contractor advised the Agency that "existing well records have limited use in determining the adequacy of the cement sheath outside of a well casing".⁴⁰ For certain existing Class II wells, the absence of fluid migration will be based on well records. A sample of these wells will be tested in order to ascertain if reliance upon well records was adequate as an indicator of the mechanical integrity of the well. The costs of this requirement are based upon a sample of 3,000 injection wells nationwide.

2. Initial reporting of test results—existing enhanced recovery wells (+\$2.5 million). In the case of new injection wells and existing disposal wells test results are reported in the permit application. However, existing enhanced recovery injection wells may be covered by rule, but no provision was made for reporting test results to the State Director. This omission has been corrected by attributing to operators of wells covered by rule, a cost of \$25 per report.

3. Financial responsibility (+\$5.0 million). The April 1979 proposal did not include the cost, to operators of

existing enhanced recovery wells, of securing a well closure bond. Costs for such wells were estimated in the same fashion as costs for existing disposal well operators.

4. Unit permitting cost (+\$2.2 million). In EPA's earlier analysis the unit cost of permit application used in table XIV-1⁴¹ to calculate the five-year cost to industry was inconsistent with the unit cost which should have been used, as calculated in Chapter XI.⁴² Previously the cost for permitting new salt water disposal (SWD), new enhanced recovery and existing SWD wells was \$620; \$367 and \$240, respectively. The correct unit costs are \$675; \$422 and \$262, respectively.

5. Changes accruing to well closure and injection wells not put in service (\$-92.8 million). In EPA's earlier estimate it was assumed that wells would either be repaired, or abandoned and redrilled, depending on the type of well. In the current analysis the results of the production impact analysis have been integrated into the cost analysis.⁴³ The cost model now recognizes that the predicted number of new enhanced recovery (ER) wells will be reduced by 2,470 as a result of the evaluation of the area of review. It is estimated that the

⁴¹ Arthur D. Little, Inc., *Cost of Compliance, Proposed Underground Injection Control Program, Oil and Gas Wells*. (June, 1979), p. 196.

⁴² *Ibid.*, p. 159.

⁴³ Booz, Allen and Hamilton, *op. cit.*, pp. 16 ff.

³⁰ Temple, Barker and Sloane, *op. cit.*, Part I, p. II-10.

³¹ Geraghty and Miller, Inc., *Economic Analysis, Class I Rehabilitation*. (April 30, 1980).

³² Temple, Barker and Sloane, *op. cit.*, Part I, p. II-11.

³³ Geraghty and Miller, *op. cit.*, Part I, p. II-5.

³⁴ Temple, Barker, and Sloane, *op. cit.*, Part I, p. II-5.

³⁵ *Ibid.*, Part I, p. II-12.

³⁶ *Ibid.*, Part I, p. II-12.

³⁷ Geraghty and Miller, *op. cit.*, p. 14.

³⁸ Temple, Barker and Sloane, *op. cit.*, Part I, p. III-6.

³⁹ Geraghty and Miller, *op. cit.*, p. 9.

⁴⁰ Geraghty and Miller, Inc., *Mechanical Integrity Testing of Injection Wells*. (April 30, 1980), p. 9.

evaluation will show (1) a producing well needing remedial action; (2) an abandoned well requiring reabandonment; or (3) both (1) and (2). It is judged that the anticipated production will not warrant the required expenditures to repair an estimated 2,220 abandoned wells and 88 producing wells. The operator will therefore choose not to place the new ER wells in service, thereby avoiding the cost of remedial action to wells in the area of review. Savings, relative to EPA's earlier costs estimate, amount to \$70.8 million. Similarly, forty new (i.e., converted) ER wells will require remedial action but will be abandoned rather than repaired. This reduces EPA's earlier cost estimated by \$1.0 million.

EPA estimates that fifteen new salt water disposal wells will not be placed in service due to the need to repair both a producing and abandoned well in the area of review. Fifteen abandoned wells and a like number of producing wells will not be repaired, resulting in a reduction of \$750 thousand from EPA's earlier estimate.

In addition, (a) 590 existing ER and 500 existing SWD wells will be abandoned rather than repaired. When the cost of abandoning the injection and associated producing wells is taken into account, the "savings" over EPA's earlier cost estimate is estimated to be \$18.9 million; and (b) seventy five existing SWD wells will be abandoned rather than repaired, at a net "savings" of \$150,000.

Finally, the abandonment of wells and decision not to put new injection wells into service results in savings in the cost of permitting, reporting the results of mechanical integrity tests and obtaining plugging bonds. These "indirect" savings total \$1.2 million.

Table 6 shows a reconciliation of the earlier Class II cost estimate and the current one. In all cases where a well was abandoned rather than repaired, the cost of its abandonment was properly considered in the calculation of the "savings" over EPA's prior cost estimate.

1. Industry Costs.—Incremental non-recurring costs of compliance to operators are estimated to be \$565 million over the first five year period. Of this total \$20 million are for the preparation of permit applications, and \$149 million are the cost associated with determining the nature and extent of corrective action. The bulk of these costs, \$396 million, is the estimated cost of the corrective work itself.

Table 6.—Reconciliation of Current and Previous Class II Industry Costs

(Thousands of 1977 dollars)

1. April, 1979 estimate ¹	\$647,000
2. Alaska	+700
3. Initial reporting of test results for existing ER wells	+2,500
4. Plugging bond, existing ER wells	+5,000
5. Correction, unit cost of permitting	+2,200
6. Random sampling for fluid migration	+4,500
7. Production impact analysis	-192,800
8. Current cost estimate	569,000

¹ Arthur D. Little, Inc., Cost of Compliance. Proposal Underground Injection Control Program, Oil and Gas Wells. (June, 1979) pp. 196-200. Includes recurring costs.

Source: Booz, Allen and Hamilton, Inc., Underground Injection Control Program Class II Well Incremental Compliance Cost Refinements. (April 30, 1980), p. 33.

In estimating the cost of corrective action the unit cost of reabandoning a well was taken as \$20,000. EPA reviewed the validity of this estimate since the proposal by surveying costs of reabandonment experienced by operators and state regulatory agencies between 1975 and 1979 in Louisiana, Michigan and Texas. After adjusting for changes in price levels EPA's consultant concluded that \$20,000 represented a reasonable average of the considerable range of unit costs uncovered by the survey.⁴⁴

On the average, industry will experience one-time costs of some \$113 million per year over a five-year period. These estimates assume the current requirements for Class II and do not try to anticipate the outcome of the mid-course evaluation regarding the area of review requirement.

In addition to the one-time costs associated with existing wells, there are incremental costs which producers will incur each year to collect and report monitoring data. The total recurring costs attributable to the regulation are estimated at \$4 million over five years or about \$800,000 per year. (Table 7).

A note of caution is warranted regarding the correct interpretation of the costs to Class II operators. First, it was assumed in the estimating methodology that the area of review would be ¼ mile in all cases. EPA believes that this assumption results in an overstatement of industry costs because the area of review, when calculated by a mathematical formula as permitted by the regulations, will probably be substantially less than ¼ mile in most cases. This means that the number of producing and abandoned wells subject to testing, correction and reporting requirements is substantially less than the number ascertained through the use of the ¼ mile assumption.

⁴⁴ Booz, Allen and Hamilton, *op. cit.*, p. 11.

Table 7.—Incremental Five-Year Costs to Producers, Class II Wells

(Thousands of 1977 dollars)

NON-RECURRING:	
Evaluation of Construction:	
Previously Abandoned Wells	12,600
Producing Wells	28,200
Injection Wells*	108,500
Subtotal	149,300
Corrective Action:	
Previously Abandoned Wells	258,100
Producing Wells	38,500
Injection Wells	85,400
Abandon injection wells and associated producing wells	13,800
Subtotal	395,800
Permit Application	20,100
Subtotal, non-recurring	565,200
RECURRING:	
Monitoring and Reporting	4,000
Total	569,000

*Includes plugging bond for existing enhanced recovery wells.

Note.—Does not add to total due to rounding.

2. State Costs.—The estimate of the incremental costs to States, of implementing the proposed UIC control program for Class II, is based on an estimate of the total effort that will be required in oil-producing States to enforce the proposed Federal regulations. The amount currently spent on UIC programs by these States was then subtracted from the total, yielding the incremental costs.⁴⁵

It is estimated that oil-producing states will incur total costs of \$38 million over a five year period. Of this, \$16 million will be one-time costs to re-permit existing disposal wells and other start-up costs. The remaining \$22 million will cover the permitting of new wells, monitoring and enforcement, and general overhead. Since current State spending projected for five years equals \$20.7 million, incremental costs over five years are \$17 million or \$3.5 million annually (Table 8).

Class III Wells. Special process mining is, in most instances, a developing technology already operating under some State controls. There are about 8,000 wells but a relatively small number of sites at the present time.⁴⁶ Consequently, the costs of compliance are estimated to be small and the impact on the industry to be negligible.

Table 8.—Incremental Five-Year Costs to States, Class II Wells

(Thousands of 1977 dollars)

Non-recurring:	
Ground Water Inventory	2,174
Permit Existing Disposal Wells	7,810
Permit New Wells	4,505
Other	2,072
Subtotal	16,560

⁴⁵ Arthur D. Little, Inc., *op. cit.*, p. 183.

⁴⁶ Geraghty and Miller, *op. cit.*, p. 4.

Table 8.—Incremental Five-Year Costs to States, Class II Wells—Continued

(Thousands of 1977 dollars)

Recurring:	
Overhead	5,590
Enforcement	13,802
Monitoring Reports	2,203
Subtotal	21,595
Total State Cost	38,155
Less: Current State Spending	-20,740
Total Incremental State Cost	17,415
Recurring	7,650
Non-recurring	9,855

Source: Arthur D. Little, Inc., *Cost of Compliance: Proposed Underground Injection Control Program, Oil and Gas Wells* (June, 1979), p. 193, and U.S. Environmental Protection Agency, *Class II State Cost* (May, 1980).

1. **Industry Costs.**—The total incremental cost to industry of complying with Class III requirements is estimated to be \$6.3 million for the first five years, or about \$1.3 million annually. Of this, about \$5.7 million are nonrecurring costs mainly associated with the test for mechanical integrity and repair of faulty wells. The remaining half-million dollars are the cost of monitoring and reporting.⁴⁷

The States of Texas and Louisiana account for all current Frasch process sulfur mining. There are ten mine fields with approximately 500 wells in the two States. The average useful life of a Frasch well is about one year. Since this practice was started eighty years ago, approximately 35,000 wells have been drilled.⁴⁸

The total one-time permitting expenses for the ten fields will be approximately \$34,000, and reporting costs, \$15,000 over five years.

There are eighty operating salt solution mining sites in the United States, principally in Texas, Louisiana, Michigan, New York, Ohio, and Kansas, containing approximately one thousand wells. Permit applications expenses for the thirty fields are estimated to total \$204,000 and incremental annual reporting requirement expenses are estimated at \$165,000 over five years. The total one-time cost of mechanical integrity testing is estimated to be one-half million dollars.

One operating field with 18 wells (17 injection and one extraction) for the solution mining of potash exists in Moab, Utah.⁴⁹ Permit application requirements for the site will involve a one-time cost of \$30,000.⁵⁰ There will be no costs for integrity testing of the injection wells, as all abandoned wells in the field are thought to be adequately

plugged.⁵¹ Therefore no cost will be incurred by the operator for reviewing nearby wells. There will be recurring incremental costs of \$100,000 for reporting over a five year period.

Summaries of the one-time costs and annual recurring costs to industry are presented in Table 9.

2. **State Costs.**—The regulations require collection and review of data on

a quarterly basis for each site subject to the regulations. Seven hours per submission per site has been employed in estimating state costs. The submission of an annual report to EPA will require 3 to 35 work days per State to comply with the regulations, depending on the number of permits issued, quarterly reports reviewed, and other regulatory activities.

Table 9.—Incremental Five-Year Costs to Industry, Class III

(In thousands of 1977 dollars)

	Mechanical Permitting	Monitoring integrity test	Remedial wells	action	Total
Non-recurring:					
In-situ gasification	10	0	0	0	10
Uranium leaching	60	0	0	0	60
Geothermal	10	0	0	0	10
In-situ copper leaching	31	0	300	0	331
Frasch sulfur mining	34	0	0	0	34
Solution mining of salt	204	519	3,000	1,500	5,223
Solution mining of potash	30	0	0	0	30
Subtotal	379	519	3,300	1,500	5,698
Recurring:					
In-situ gasification	0	11	11		
Uranium leaching	0	53	53		
Geothermal	0	9	9		
In-situ copper leaching	18	9	27		
Frasch sulfur mining	0	15	15		
Solution mining of salt	180	165	345		
Solution mining of potash	0	100	100		
Subtotal	198	362	560		
Total	N/A	N/A	6,258		

N/A=Not Applicable.

Source: Environmental Protection Agency, *Class III Cost Analysis* (May 1980).

The State program costs for all States to comply with this Subpart of the regulations are estimated to be \$1.9 million over five years as shown in Table 10.

Class IV Wells. Until an underground injection facility receives an UIC permit issued pursuant to the Safe Drinking Water Act it is subject to the interim status requirements of the Resource Conservation and Recovery Act.⁵² The Agency adopted this approach because the UIC program does not have the equivalent of an interim status period when owners or operators who dispose of hazardous waste by underground injection are subject to Federally enforceable standards. Enforcement of environmental controls under the UIC program must await: the development by states of programs for primary enforcement responsibility; the approval or disapproval of those programs by EPA; and the development of UIC programs by EPA in States which fail to develop and implement adequate programs for primary enforcement

responsibility. EPA does not believe that UIC primary enforcement programs will be in place in all States on the effective date of these interim status regulations. Therefore, in order to provide control over underground injection of hazardous waste during the interim status period, as contemplated by RCRA, it is necessary to regulate underground injection under 40 CFR 265, Subpart R.

Table 10.—Incremental Five-Year Costs to States, Class III Wells

(In thousands of 1977 dollars)

	Total
Non-recurring:	
Developing state programs	72
Program hearings	23
Permitting existing sites	536
Permit hearings	78
Subtotal	709
Recurring:	
Quarterly Review	285
Annual Report	130
Enforcement	615
Subtotal	1,230
Total	1,939

Source: Environmental Protection Agency, *Class III Cost Analysis* (May 1980).

⁴⁷ Environmental Protection Agency, *Class III Cost Analysis* (May, 1980).

⁴⁸ Temple, Barker and Sloane, *op. cit.*, Part I, p. II-23.

⁴⁹ *Ibid.*, Part I, p. II-27.

⁵⁰ *Ibid.*, Part I, p. III-6.

⁵¹ *Ibid.*, Part I, p. III-8.

⁵² 45 FR 33176.

Once an UIC program is promulgated by a state, Class IV wells which inject hazardous waste directly into an underground source of drinking water will be prohibited.⁵³ This prohibition is effective six months after the effective date of the program. Requirements for Class IV wells which inject above an underground source of drinking water are reserved.

Preliminary analysis, based on limited field work, suggests that there are between 5,000-10,000 wells that will meet the definition of Class IV. The "best estimate" is 7,500 wells.

In estimating costs EPA's consultant based its analysis on the expectation that large disposers—those injecting more than one thousand gallons per day—will pretreat their waste stream to remove the hazardous components, then transport the sludge to an off-site facility. Small disposers it is assumed, will transport the entire waste stream without prior treatment.⁵⁴ In revising the cost estimate to conform with the promulgated regulations EPA followed this convention.⁵⁵ In addition, EPA included costs for monitoring of injection fluids and quarterly reporting to the Director in order to present the costs of a comprehensive regulatory program. Such monitoring and reporting is not now required, but under consideration. To illustrate, one of the options for which the Agency has requested comments, in connection with permitting standards for hazardous waste management facilities, would require a demonstration that the anticipated impact upon groundwater " * * * will not adversely affect the health of persons or violate NPDRW based on the following information:

Injection volume and pressure * * *
Direction of ground water flow * * *
Monitoring up-gradient and down-gradient." ⁵⁶

It is expected that the cost to industry in the first five years of program operation will total \$163 million. State costs are estimated at \$1.2 million over this period.⁵⁷

Class V Wells. Generally, wells falling into this class inject nonhazardous fluids into or above formations that contain underground sources of drinking water. Owners or operators of such wells are to notify the Director of the existence of any well under his control meeting the definition of Class V, and submit certain information within one year of the effective date of the UIC program. Within three years of such effective date

the Director is to: submit certain information; assess the contamination potential of Class V wells; assess the available corrective alternatives and their environmental and economic consequences; and make recommendations for the most appropriate regulatory approaches and for remedial actions, where appropriate.⁵⁸

Nonrecurring State costs for Class V wells are related to establishing the assessment program while annual costs relate to compiling, categorizing and analyzing the information collected. It is estimated that this effort will cost \$5.2 to \$7.2 million over a five year period.

Production Impact

Class II

EPA followed a seven step approach to the estimate of the impact of the Regulations on oil production.⁵⁹

1. Determine the cost of compliance for each event combination.
2. Calculate the break-even point for each event combination.
3. Calculate the probability for each event combination.
4. Determine the expected value of fraction of wells shut down or unrealized, i.e., those producing below break-even point.
5. Determine the expected value of fraction of production lost due to shut down/unrealized wells.
6. *Number of wells shut down* = total number of wells under regulation $\times$ (sum of expected values of fraction of wells shut down/unrealized).
7. *Lost production* = total production from wells under regulation $\times$ (sum of expected value of fraction of lost production).

Previously, EPA estimated that approximately 12,000 barrels of oil per day would not be produced as a result of the regulations.⁶⁰ In the interim EPA's contractor reviewed the analysis and made several important changes.⁶¹ First,

⁵³ 40 CFR 146.51; 40 CFR 146.52.

⁵⁴ Booz, Allen and Hamilton, Inc., *Re-estimation of Impacts of Proposed Underground Injection Control Regulations on Crude Oil Production*, (April 30, 1980), Attachment 3, p. 11.

⁵⁵ 44 FR 23 758, April 20, 1979.

⁵⁶ Generally, Booz, Allen and Hamilton, *Re-estimation of Impacts*, p. III-3.

the profit per barrel was revised from four to six dollars because the rapidly increasing price of crude oil rendered the earlier profit figure obsolete. Second, the capital recovery period was revised from ten years for all wells, to one and one-half years for new ones, and three for existing wells, to more accurately reflect current industry practice. This change represents a substantially more stringent assumption regarding the required profitability of associated producing wells when evaluated against the cost incurred in compliance with the Regulations. Third, the discount rate used in the calculation of the present value of future profits was increased from 10% to 13%. Again, this represents a more stringent criterion for determining whether the expenditure of funds in compliance with the Regulations is justified on the basis of future profits. All of the changes except that relating to profits tended to increase the impact on production compared to EPA's previous estimate.

The combined effect of those changes was to increase the estimate of production loss from 12,000 to 13,300 barrels per day (BPD).⁶² The impact associated with each category of injection well is presented in Table 11. It is to be noted that the estimate of lost production is closely tied to profit rates, the distribution of profit per barrel among wells, and payback period. If profits are assumed to increase from six to ten dollars per barrel, which EPA believes to be a reasonable assumption, the estimated loss in production attributable to the regulations declines from thirteen thousand to five thousand BPD.⁶³ If, instead of applying a uniform profit of \$6 per barrel, it is assumed that one-third of all wells earn \$4 per barrel and two-thirds earn \$10 per barrel, the loss in oil production increases from thirteen thousand to twenty thousand BPD.⁶⁴ If the required payback period is decreased from one and one-half to one year for new wells, and from three to two years for existing wells, the loss in production amounts to 29,000 BPD.⁶⁵

⁶² *Ibid.*, p. III-2.

⁶³ *Ibid.*, p. III-3.

⁶⁴ *Ibid.*, p. III-8.

⁶⁵ *Ibid.*, p. III-3.

Table 11.—Production Loss Related to Type of Injection Well Subject to Regulation

Type of well	Injection wells		Associated producing wells		Associated production loss (thousands BPD)	
	Shut-in	Not put into service	Shut-in	Not covered to enhance recovery	Shut-in wells	Enhanced recovery not put into service
Existing enhanced recovery	1,090		1,090		2.4	2.4
Existing salt water disposal	75		300		.4	.4
New enhanced recovery	40	2,470		2,510		10.3
New salt water disposal		15		60		.2
Totals	1,205	2,485	1,390	2,570	2.8	13.3

Source: Booz, Allen and Hamilton, *Re-estimation of Impacts of Proposed Underground Injection Control Regulations on Crude Oil Production*, (April 30, 1980), p. III-4.

⁵³ 40 CFR 122.36.

⁵⁴ *Ibid.*, Part II, p. III-5.

⁵⁵ U.S. Environmental Protection Agency, *Class IV Cost Analysis* (May 1980).

⁵⁶ 45 FR 33332.

⁵⁷ Environmental Protection Agency, *Class IV Cost Analysis* (May 1980).

In the aggregate the regulations are expected to have little effect on profits, prices, production, or employment. Imported oil prices are determined by the Organization of Petroleum Exporting Countries (OPEC), and domestic "new" oil is priced accordingly. With the expiration of controls on "old" oil in 1981, all domestically produced oil will be priced according to OPEC levels. Therefore it is reasonable to expect that the cost of compliance will be absorbed by oil firms.⁶⁶ In 1977 revenues of the oil industry were \$32.5 billion.⁶⁷ The average annual cost of \$113 million attributable to the regulations represents about one third of one percent of total revenues.

Based upon overall output per employee productivity figures, the loss of 13,300 barrels per day suggests a maximum potential reduction in employment of 600 employees. In practice the number of positions actually eliminated may approach zero, for two reasons: First, almost all of the lost production accrues to future wells not put into service. Since they are not yet in existence there are no existing jobs eliminated. Second, the remaining lost production of 2,700 BPD is distributed among fifteen hundred producing wells. Considering the widely dispersed impact it appears that few, if any, current jobs will be lost.⁶⁸

On a regional level the impact will be more variable. In general, regions with (1) a higher proportion of stripper wells, (2) wells producing at a relatively low output, (3) a large number of abandonments, and (4) poor completion and abandonment practices, will be affected more than regions not so characterized. Based upon these types of considerations it appears that the impact of the regulations will be felt to a greater extent in the Illinois and Appalachian Basins. The least likely regions to experience an impact are the Rocky Mountain and the Gulf Coast. Between these extremes will fall California, East Texas and the Permian Basin.⁶⁹

Class III⁷⁰

The potential impact of the regulations is not expected to be significant, for the following reasons:

(1) For most industries the production from the sites subject to the regulations account for only a small proportion of domestic supply;

(2) For salt and Frasch sulfur production, compliance costs are relatively small; and

(3) Firms engaging in solution mining are diversified.

No loss of employment is expected to be caused by compliance with the regulations.

Reporting Impacts

Reporting requirements apply to all permit holders under Classes I and III, and to owners or operators of wells authorized by permit or rule under Class II. Owners or operators of Class II wells are to report once each year, while owners or operators of Class I and III wells are to report quarterly. Although not presently required, reporting costs have also been estimated for Class IV operators, as discussed earlier.

Total annual costs to owners and operators of Class I, II, and III wells are estimated to be \$468,000. Owners and operators of Class IV wells are estimated to incur costs in the first year only of approximately \$600,000 in submitting monitoring reports. They will not incur reporting costs beyond the first year because these wells are banned after six months from the time the UIC program becomes effective.

The State will review these reports. It will, in turn, make three types of reports to EPA: (1) Quarterly reports on the compliance status of major facilities (Classes I and IV) once the State program is effective; (2) annual reports on the operation of its program; and (3) "mid-course correction" reports, as

described in the following section on program evaluation.

Annual State costs for the review of monitoring data for Classes I, II, and III, and for the submission of the quarterly and annual reports to EPA, are estimated to be about \$1.0 million per year. These are recurring annual costs and do not include a cost of \$221,000 incurred by the States during the first year only, to review Class IV monitoring reports. It is expected that the mid-course correction reports will require an insignificant amount of time to prepare, and no cost has been included for them.

EPA will review the quarterly and annual reports from the 57 jurisdictions at an estimated cost of \$18,000 per year.

In summary, reporting costs during the first five years of program operation total \$8.2 million, as follows:

- Owner/operators, \$2.9 million.
- States, \$5.2 million.
- EPA, \$90 thousand.

Reporting costs are presented in additional detail in Table 12.

Evaluation Plan

In the preamble to the proposed regulations,⁷¹ EPA summarized its plan for evaluation of the UIC program and indicated it would provide a more detailed plan on promulgation. The discussion below summarizes the Agency's plan in this area.

EPA would like to be able to target the UIC requirements to those well types and geologic, geographic or hydrologic conditions, that have the greatest potential for groundwater contamination. EPA will evaluate the program and, based on its findings, may adjust the requirements of the UIC program.

⁷¹ 44 FR 23752, April 20, 1979.

Table 12.—Reporting Costs

	Well class			
	I	II	III	IV
Well owner/operator:				
Reporting monitoring data:				
Reporting frequency per year	4	1	4	4
Unit time (hours)	8	1	8-16	4
Unit cost (dollars)	75	11-18	75-150	40
Number of wells/sites	1309	25,200	142	7,500
Total cost per year (\$ thousands)	23	378	67	600
State:				
Review monitoring reports:				
Number reviewed per year	1,236	25,200	568	15,000
Unit time (hours)	6	1	7	1
Unit cost (dollars)	90	18	105	15
Total cost per year (\$ thousands)	109	454	60	221
Quarterly report to EPA on compliance status:				
Number submitted per year	96	n.a.	n.a.	114
Unit time (hours)	18	n.a.	n.a.	40
Unit cost (dollars)	270	n.a.	n.a.	580
Total cost per year (\$ thousands)	26	n.a.	n.a.	66
Annual report to EPA on program operation:				
Unit time (hours)	30-140	160	108	160
Unit cost (dollars)	400-2,000	2,400	1,625	2,400
Total cost per year (\$ thousands)	10-49	77	26	137

⁶⁶ Booz, Allen and Hamilton. *Underground Injection Control Program. Industry Analysis of Class II and Class III Well Regulation*. (April 30, 1980), p. III-3.

⁶⁷ *Ibid.*, p. II-12.

⁶⁸ Booz, Allen and Hamilton. *Underground Injection Control Program. Industry Analysis*. . . (p. IV-2).

⁶⁹ *Ibid.*, p. 2: IV-4.

⁷⁰ *Ibid.*, p. III-14 ff.

Table 12.—Reporting Costs—Continued

	Well class			
	I	II	III	IV
Environmental Protection Agency:				
Review of quarterly report on compliance status:				
Number received	96	n.a.	n.a.	114
Unit time (hours)	4	n.a.	n.a.	4
Unit cost (dollars)	40	n.a.	n.a.	40
Total cost per year (\$ thousands)	4	n.a.	n.a.	5
Review of Annual Report on Program Operation:				
Number reviewed	24	32	16	57
Unit time (hours)	4	16	4	4
Unit cost (dollars)	40	160	40	40
Total cost per year (\$ thousands)	1	5	1	2

¹ The average number of wells in States which do not presently require reporting.

² Only two reports will be submitted since it is assumed that all injections of hazardous waste ceases within six months. Hence, there are no Class IV reporting costs to injectors after the first year.

n.a. = Not applicable.

The Agency evaluated two approaches for directly measuring the improvement in ground-water quality that would result from implementation of the UIC program and concluded that neither was a viable method of evaluating the program. The first approach was based on the drilling of monitoring wells in the immediate vicinity of a random sample of injection wells to determine the ambient ground-water quality. Because the expected failure rates (i.e., the fraction of wells expected to fail a mechanical integrity test) are small (estimated at 2-3% for Class II wells, for example) large sample sizes would be needed to measure the effect reliably. It was estimated that the Agency would need to sample 200 injection wells to measure the failure rates and a much larger sample, perhaps 1,000, to make inferences about what categories of wells are most likely to fail. Using the conservative assumption that at least two monitoring wells would generally be needed for each injection well, and that the cost of drilling a monitoring well would be on the order of \$20,000, the total costs for the well drilling alone would be \$8 million to sample 200 injection wells and \$40 million to sample 1,000 wells. In addition to its extremely high cost, this approach has two other serious drawbacks. It provides no information on the effect of nearby wells in the area of review on groundwater or on the effectiveness of the UIC program in abating pollution from these wells. It also would not provide valid data on the effectiveness of the UIC program in ensuring that leaking injection wells are repaired. To obtain data on ground-water quality before and after program implementation, the sample on which the evaluation would be based would have to be drawn and known to the program managers before the program takes effect. There would, therefore, be no way to ensure that the treatment of the sampled injection wells was representative of the State programs as

a whole. For these reasons, this approach was rejected.

The second direct approach that EPA evaluated is based on analysis of water from existing water wells (or other wells, such as existing monitoring wells) that happen to be located near injection wells. If a sample of such wells showed a significantly higher rate of contamination, for example by salinity, than a sample of wells further from injection wells, one could conclude that the injections wells were likely to be a cause of contamination. Similarly, if the rate of contamination were reduced after implementation of the UIC program, one could conclude that it had been effective. This approach would avoid the necessity of drilling monitoring wells, but it suffers from a number of serious drawbacks which have led EPA to reject it as well. First, it would be necessary in each case to perform a ground-water modeling exercise to determine whether contamination, if it existed, would have reached a given water well. Methods and data to do this routinely with sample sizes of hundreds or thousands do not exist. Second, we would not know when the contamination might have begun, so we would not know how far the plume of contamination would have traveled even if we have an adequate ground-water flow model for the area. Third, existing water wells would in many cases not be drawing from the depths and strata which may have been contaminated. Fourth, where contamination has in fact reached a water well, the well might well have been closed down without an adequate record, introducing an inherent bias. Fifth, it would be impossible to distinguish between contamination from an injection well and contamination from a nearby brine pit (perhaps abandoned). Sixth, it is not clear whether the population of injection wells with water wells located nearby is statistically representative of injection wells as a whole.

EPA also evaluated the possibility of using surface resistivity methods as part of an evaluation scheme to determine from the surface whether contamination had occurred. The evaluation included a field test of the method in an area where contamination by a Class II well had been alleged. EPA concluded that, at its present stage of development, the results of the method are not clear enough for routine use in a broad scale evaluation.

Because of the lack of valid and feasible means of evaluating the effect of the UIC program directly on ground-water quality, EPA has been forced in its evaluation plans to rely on an indirect set of measures of the need for and the effectiveness of the program. EPA will use the observed failure rates as its major evaluation tool. EPA will evaluate these failure rates and, based on its findings, make appropriate changes in the regulations.

Any such changes would be accomplished through amendments of these regulations and would involve full opportunity for public comment. EPA also would expect that the implementation of the UIC program would lead to an increased public awareness of the potential impacts of well injection on groundwater and hence to an increase in the number of reported cases of alleged contamination and to investigation and resolution of these incidents, thus improving the available data base on the direct impacts of injection wells on ground-water quality.

In addition to analysis of failure rates, EPA will also evaluate the administrative effectiveness of the program—whether permits are being issued as required, whether corrective action is in fact occurring when problems are discovered, and so forth.

The mechanisms which EPA will use to carry out these evaluations are the following:

For Classes I, II, III, IV, and V. Quarterly or annual reporting is required of both the owners and operators of wells and the States with primary enforcement responsibility for the program. This periodic reporting will allow the periodic assessment of the efficiency of the program in terms of whether the permits are being issued on such schedule, what the rate of permit violations are and whether the rates are increasing or decreasing, and whether State programs are performing adequately as measured by the conditions of State primacy.

In addition, the following will be required for specific categories of wells:

For injection wells in Classes I, II, and certain Class III wells. the regulations'

major requirements are periodic mechanical integrity tests and evaluation of wells in the area of review. EPA will conduct a "mid-course" evaluation of these two requirements on an ongoing basis as the Agency collects data from the States based on the first two years of program operations. The evaluation will provide information on the potential environmental problem posed by injection wells lacking mechanical integrity and by abandoned and producing wells that penetrate the zone of endangering influence associated with injection wells. It will also yield information on the costs and benefits of corrective action and analyze alternatives to the current requirement.

For other categories of Class III wells, the scheme presented above is not appropriate because the applicable regulatory requirements are quite different; these will be evaluated on a case-by-case basis.

For Class IV wells, EPA's evaluation will center on whether such wells are in fact identified and phased out when this is required by the regulations.

Evaluation of the UIC program's effectiveness with respect to Class V wells is premature at this time.

EPA considered several alternatives on the timing of the data submission and for "mid-course" evaluation of the requirement for mechanical integrity testing and for the area of review. The considerations that were balanced included the burden on the States in supplying the data, the desire to make any needed corrections in the regulations as quickly as possible, and the need for a sufficiently large and representative sample of data. The reproposal provided for submission of data after the first year of operation of the State programs. Concern developed, however, that one year's operation might be an arbitrary limit. It would be unrepresentative because it is too short for two reasons: (1) Practical experience with program implementation indicates that an initial period of time is required during which both program staff and the regulated community gains experience with the new procedures and requirements; and (2) because five years are allowed for mechanical integrity tests for existing injection wells (where required), it is likely that relatively few of these actions will occur in the first year. Conversely, one year's operation may not provide enough data with which to conduct a statistically valid evaluation of the area of review and mechanical integrity portions of the regulation.

The Agency, therefore, selected an alternative which it believes is an

appropriate compromise. The requirements for the evaluation of the major provisions applicable to Classes I, II, and certain Class III wells are specified in 40 CFR 122.18(c)(4)(ii) and 146.

The State Director is to submit this data during the first two full years of operation of the State program, at six-month intervals. The data is to include information on the hydrogeological environment, the numbers and types of wells in the area of review and any remedial action required by the Director, and the results of mechanical integrity tests conducted pursuant to the regulations.

This alternative ensures the data will cover a representative period of program operation and also enable EPA to begin to develop data analysis procedures and to draw appropriate conclusions about program effectiveness as soon as it gets a large enough sample of data.

The Agency originally proposed to apply the evaluation of mechanical integrity and area of review requirements solely to Class II wells because it was here that major questions about the requirements had been raised. After further consideration, the Agency decided to evaluate the requirements for Class I and certain Class III wells for which the requirements are similar.

OMB Review

The sections of these regulations pertaining to recordkeeping and reporting will be submitted to the Office of Management and Budget for review in light of the requirements of the Federal Reports Act, 44 U.S.C. Sec. 3501 *et seq.*

(Secs. 1421, 1422, 1423, 1431, 1445, 1447, 1450, Safe Drinking Water Act, as amended, 42 U.S.C. 300(f) *et seq.*)

Douglas M. Costle,
Administrator.

June 17, 1980.

Part 146 is added to Title 40 to read as set forth below:

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

Subpart A—General Provisions

- Sec. 146.01 Applicability and scope.
- 146.02 Law authorizing these regulations.
- 146.03 Definitions.
- 146.04 Criteria for exempted aquifers.
- 146.05 Classification of injection wells.
- 146.06 Area of review.
- 146.07 Corrective action.
- 146.08 Mechanical integrity.
- 146.09 Criteria for establishing permitting priorities.

Sec.

- 146.10 Plugging and abandoning Class I-III wells.

Subpart B—Criteria and Standards Applicable to Class I Wells

- 146.11 Applicability.
- 146.12 Construction requirements.
- 146.13 Operating, monitoring and reporting requirements.
- 146.14 Information to be considered by the Director.
- 146.15 Mid course evaluation requirements.

Subpart C—Criteria and Standards Applicable to Class II Wells

- 146.21 Applicability.
- 146.22 Construction requirements.
- 146.23 Operating, monitoring, and reporting requirements.
- 146.24 Information to be considered by the director.
- 146.25 Mid course evaluation requirements.

Subpart D—Criteria and Standards Applicable to Class III Wells

- 146.31 Applicability.
- 146.32 Construction requirements.
- 146.33 Operating, monitoring and reporting requirements.
- 146.34 Information to be considered by the Director.
- 146.35 Mid course evaluation requirements.

Subpart E—Criteria and Standards Applicable to Class IV Injection Wells

Subpart F—Criteria and Standards Applicable to Class V Injection Wells

- 146.51 Applicability.
 - 146.52 Inventory and Assessment.
- Authority: Secs. 1421, 1422, 1423, 1431, 1445, 1447, and 1450 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300(f) *et seq.*

Subpart A—General Provisions

§ 146.01 Applicability and scope.

(a) This Part sets forth technical criteria and standards for the Underground Injection Control Program. This part should be read in conjunction with 40 CFR Parts 122, 123, and 124 which also apply to UIC programs. 40 CFR Part 122 defines the regulatory framework of EPA administered permit programs. 40 CFR Part 123 describes the elements of an approvable State program and procedures for EPA approval of State participation in the permit programs. 40 CFR Part 124 describes the procedures the Agency will use for issuing permits under the covered programs. Certain of these procedures will also apply to State-administered programs as specified in 40 CFR Part 123.

(b) Upon the approval, partial approval or promulgation of a State UIC program by the Administrator, any underground injection which is not authorized by the Director by rule or by permit is unlawful.

§ 146.02 Law authorizing these regulations.

The laws authorizing these regulations and all other UIC program regulations are referenced in 40 CFR part 122. They include Sections 1421, 1422, 1423, 1431, 1445, 1447 and 1450 of the Public Health Service Act as amended by the Safe Drinking Water Act ("SDWA") (Pub. L. 93-523) and by the SDWA Amendments of 1977 (Pub. L. 95-190).

§ 146.03 Definitions.

The following definitions apply to the underground injection control program.

Abandoned well means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions. For RCRA, application also includes the information required by the Director under § 122.25 (contents of Part B of the RCRA application).

Aquifer means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Area of review means the area surrounding an "injection well" described according to the criteria set forth in § 146.06.

Casing means a heavy metal (steel or iron) pipe or tubing of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering the hole.

Catastrophic collapse means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

Cementing means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

Confining bed means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

Confining zone means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

Contaminant means any physical, chemical, biological, or radiological substance or matter in water.

Director means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no approved State program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even where there is an approved State program. (For example, when EPA issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see § 123.69.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

Disposal well means a well used for the disposal of waste into a subsurface stratum.

Effective date of a UIC program means the date that a State UIC program is approved or established by the Administrator.

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States "Environmental Protection Agency."

Exempted aquifer means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of § 122.35(b).

Existing injection well means an "injection well" other than a "new injection well."

Facility or activity means any "HWM facility," UIC "injection well," NPDES "point source," or State 404 dredge and fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Fault means a surface or zone of rock fracture along which there has been displacement.

Flow rate means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

Fluid means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Formation means a body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable

on the earth's surface or traceable in the subsurface.

Formation fluid means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

Generator means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261.

Ground water means water below the land surface in a zone of saturation.

Hazardous waste means a hazardous waste as defined in 40 CFR 261.3.

Hazardous Waste Management facility ("HWM facility") means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

HWM facility means "Hazardous Waste Management facility."

Injection well means a "well" into which "fluids" are being injected.

Injection zone means a geological "formation", group of formations, or part of a formation receiving fluids through a well.

Lithology means the description of rocks on the basis of their physical and chemical characteristics.

Owner or operator means the owner or operator of any facility or activity subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Packer means a device lowered into a well which can be expanded to produce a water-tight seal.

Permit means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and Parts 122, 123 and 124. Permit does not include RCRA interim status (§ 122.23), UIC authorization by rule (§ 122.37), or any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

Plugging means the act or process of stopping the flow of water, oil, or gas in "formations" penetrated by a borehole or "well."

Plugging record means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location,

formation thickness, and location of plugging structures.

Pressure means the total load or force per unit area acting on a surface.

Radioactive Waste means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2, or exceed the "Criteria for Identifying and Applying Characteristics of Hazardous Waste and for Listing Hazardous Waste" in 40 CFR Part 261, whichever is applicable.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, 42 U.S.C. 6901 et seq.).

SDWA means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-190, 42 U.S.C. 300(f) et seq.).

Site means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Sole or principal source aquifer means an aquifer which has been designated by the Administrator pursuant to sections 1424 (a) or (e) of the SDWA.

State Director means the chief administrative officer of any State or interstate agency operating an approved program, or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

Stratum (plural *strata*) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

Subsidence means the lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

Surface casing means the first string of well casing to be installed in the well.

Total dissolved solids ("TDS") means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved program."

Underground injection means a "well injection."

Underground source of drinking water ("USDW") means an "aquifer" or its portion:

(1)(i) Which supplies drinking water for human consumption; or

(ii) In which the ground water contains fewer than 10,000 mg/l "total dissolved solids;" and

(2) Which is not an "exempted aquifer."

USDW means "underground source of drinking water."

Well means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

Well injection means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

Well log means a log obtained from a well, showing such information as resistivity, radioactivity, spontaneous potential, and acoustic velocity as a function of depth.

Well plug means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

Well record means a concise statement of the available data regarding a well, such as a scout ticket; a full history or day-by-day account of a well, from the day the well was surveyed to the day production ceased.

Well stimulation means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

Well monitoring means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

§ 146.04 Criteria for exempted aquifers.

An aquifer or a portion thereof which meets the criteria for an "underground source of drinking water" in § 146.03 may be determined under 40 CFR 122.35 to be an "exempted aquifer" if it meets the following criteria:

(a) It does not currently serve as a source of drinking water; and

(b) It cannot now and will not in the future serve as a source of drinking water because:

(1) It is mineral, hydrocarbon or geothermal energy producing;

(2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

(3) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse.

§ 146.05 Classification of injection wells.

Injection wells are classified as follows:

(a) **Class I.** (1) Wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells.

(2) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) **Class II.** Wells which inject fluids:

(1) Which are brought to the surface in connection with conventional oil or natural gas production;

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) **Class III.** Wells which inject for extraction of minerals or energy, including:

(1) Mining of sulfur by the Frasch process;

(2) Solution mining of minerals;

Note.—Solution mining of minerals includes sodium chloride, potash, phosphate, copper, uranium and any other mineral which can be mined by this process.

(3) in-situ combustion of fossil fuel; and

Note.—Fossil fuels includes coal, tar sands, oil shale and any other fossil fuel which can be mined by this process.

(4) recovery of geothermal energy to produce electric power.

Note.—Class III wells include the recovery of geothermal energy to produce electric power but do not include wells used in heating or aquaculture which fall under Class V.

(d) **Class IV.** Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into or above a formation which within one quarter mile of the well contains an underground source of drinking water.

(e) **Class V.** Injection wells not included in Class I, II, III, or IV.

Note.—Class V wells includes:

(1) Air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

(2) Cesspools or other devices that receive wastes, which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools;

(3) Cooling water return flow wells used to inject water previously used for cooling;

(4) Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(5) Dry wells used for the injection of wastes into a subsurface formation;

(6) Recharge wells used to replenish the water in an aquifer;

(7) Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

(8) Sand backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines;

(9) Septic system wells used:

(i) To inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank; or

(ii) For a multiple dwelling, community or regional cesspool. The UIC requirements do not apply to single family residential waste disposal systems;

(10) Subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(11) Wells used for the storage of hydrocarbons which are gases at standard temperature and pressure;

(12) Geothermal wells used in heating and aquaculture;

(13) Nuclear disposal wells.

equation illustrates one form which the mathematical model may take.

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§ 146.06 Area of Review.

The area of review for each injection well or each field, project or area of the State shall be determined according to either paragraph (a) or (b) of this section. The Director may solicit input from the owners or operators of injection wells within the State as to which method is most appropriate for each geographic area or field.

(a) *Zone of endangering influence.*

The zone of endangering influence shall be that area the radius of which is the lateral distance from an injection well, field or project in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water. Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis

$$r = \left(\frac{2.25 K H t}{S 10^X} \right)^{1/2}$$

where:

$$X = \frac{4 \pi K H (h_w - h_{b0} \times SpG_b)}{2.3 Q}$$

r = Radius of endangering influence from injection well
(length)

K = Hydraulic conductivity of the injection zone
(length/time)

H = Thickness of the injection zone (length)

t = Time of injection (time)

S = Storage coefficient (dimensionless)

Q = Injection rate (volume/time)

h_{b0} = Observed original hydrostatic head of injection
zone (length) measured from the base of the lowest
underground source of drinking water

h_w = Hydrostatic head of underground source of
drinking water (length) measured from the
base of the lowest underground source of drinking
water

SpG_b = Specific gravity of fluid in the injection zone
(dimensionless)

π = 3.142 (dimensionless).

The above equation is based on the following assumptions:

- (1) The injection zone is homogenous and isotropic;
- (2) The injection zone has infinite areal extent;
- (3) The injection well penetrates the entire thickness of the injection zone;
- (4) The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and
- (5) The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

Other models may be used as appropriate for different situations encountered in the field or where the model assumptions match more closely those situations.

(b) *Fixed Radius.* A fixed radius around the well, field or project of not less than one-fourth ($\frac{1}{4}$) mile may be used. In determining the fixed radius, the following factors shall be taken into consideration: Chemistry of injected and formation fluids; hydrogeology; population and ground-water use and dependence; and historical practices in the area.

(c) If the area of review is determined by a mathematical model pursuant to paragraph (a) of this section, the permissible radius is the result of such calculation even if it is less than one-fourth ($\frac{1}{4}$) mile.

§ 146.07 Corrective Action.

In determining the adequacy of corrective action proposed by the applicant under 40 CFR 122.44 and in determining the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the Director:

- (a) Toxicity and volume of the injected fluid;
- (b) Toxicity of native fluids or by-products of injection;
- (c) Potentially affected population;
- (d) Geology;
- (e) Hydrology;
- (f) History of the injection operation;
- (g) Completion and plugging records;
- (h) Abandonment procedures in effect at the time the well was abandoned; and
- (i) Hydraulic connections with underground sources of drinking water.

§ 146.08 Mechanical Integrity

(a) An injection well has mechanical integrity if:

- (1) There is no significant leak in the casing, tubing or packer; and
- (2) There is no significant fluid movement into an underground source of drinking water through vertical

channels adjacent to the injection well bore.

(b) One of the following tests must be used to evaluate the absence of significant leaks under paragraph (a)(1) of this section.

- (1) Monitoring of annulus pressure; or
 - (2) Pressure test with liquid or gas.
- (c) One of the following methods must be used to determine the absence of significant fluid movement under paragraph (a)(2) of this section:

- (1) For Class II only, well records demonstrating the presence of adequate cement to prevent such migration; or
- (2) The results of a temperature or noise log.

(d) The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in paragraphs (b) and (c)(2) of this section with the written approval of the Administrator. To obtain approval, the Director shall submit a written request to the Administrator, which shall set forth the proposed test and all technical data supporting its use. The Administrator shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. Any alternate method approved by the Administrator shall be published in the *Federal Register* and may be used in all States unless its use is restricted at the time of approval by the Administrator.

(e) In conducting and evaluating the tests enumerated in this section or others to be allowed by the Director, the owner or operator and the Director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, he shall include a description of the test(s) and the method(s) used. In making his/her evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation.

§ 146.09 Criteria for Establishing Permitting Priorities.

In determining priorities for setting times for owners or operators to submit applications for authorization to inject under the procedures of § 122.38 or § 123.4(g), the Director shall base these priorities upon consideration of the following factors:

- (a) Injection wells known or suspected to be contaminating underground sources of drinking water;
- (b) Injection wells known to be injecting fluids containing hazardous contaminants;
- (c) Likelihood of contamination of underground sources of drinking water;
- (d) Potentially affected population;

(e) Injection wells violating existing State requirements;

(f) Coordination with the issuance of permits required by other State or Federal permit programs;

(g) Age and depth of the injection well; and

(h) Expiration dates of existing State permits, if any.

§ 146.10 Plugging and Abandoning Class I-III Wells.

(a) Prior to abandoning Class I-III wells the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water.

(b) Placement of the cement plugs shall be accomplished by one of the following:

- (1) The Balance Method;
- (2) The Dump Bailer Method; or
- (3) The Two-Plug Method.

(c) The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

(d) The plugging and abandonment plan required in 40 CFR 122.42(f) and 122.41(e) shall, in the case of a Class III well field which underlies or is in an aquifer which has been exempted under 40 CFR 146.04, also demonstrate that no movement of contaminants from the mined zone into an underground source of drinking water will occur. The Director shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure that no migration of contaminants from the mined zone into an underground source of drinking water will occur.

Subpart B—Criteria and Standards Applicable to Class I Wells

§ 146.11 Applicability.

This subpart establishes criteria and standards for underground injection control programs to regulate Class I wells.

§ 146.12 Construction Requirements.

(a) All Class I wells shall be sited in such a fashion that they inject into a formation which is beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) All Class I wells shall be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the

well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- (1) Depth to the injection zone;
- (2) Injection pressure, external pressure, internal pressure, and axial loading;
- (3) Hole size;
- (4) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);
- (5) Corrosiveness of injected fluid, formation fluids, and temperatures;
- (6) Lithology of injection and confining intervals; and
- (7) Type or grade of cement.

(c) All Class I injection wells, except those municipal wells injecting non-corrosive wastes, shall inject fluids through tubing with a packer set immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected service.

(1) The use of other alternatives to a packer may be allowed with the written approval of the Director. To obtain approval, the operator shall submit a written request to the Director, which shall set forth the proposed alternative and all technical data supporting its use. The Director shall approve the request if the alternative method will reliably provide a comparable level of protection to underground sources of drinking water. The Director may approve an alternative method solely for an individual well or for general use.

(2) In determining and specifying requirements for tubing, packer, or alternatives the following factors shall be considered:

- (i) Depth of setting;
- (ii) Characteristics of injection fluid (chemical content, corrosiveness, and density);
- (iii) Injection pressure;
- (iv) Annular pressure;
- (v) Rate, temperature and volume of injected fluid; and
- (vi) Size of casing.

(d) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Director. At a minimum, such logs and tests shall include:

- (1) Deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid

migration in the form of diverging holes are not created during drilling.

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information, that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required, the following logs shall be considered for use in the following situations:

(i) For surface casing intended to protect underground sources of drinking water:

(A) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(B) A cement bond, temperature, or density log after the casing is set and cemented.

(ii) For intermediate and long strings of casing intended to facilitate injection:

(A) Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;

(B) Fracture finder logs; and

(C) A cement bond, temperature, or density log after the casing is set and cemented.

(e) At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class I wells:

- (1) Fluid pressure;
- (2) Temperature;
- (3) Fracture pressure;
- (4) Other physical and chemical characteristics of the injection matrix; and
- (5) Physical and chemical characteristics of the formation fluids.

§ 146.13 Operating, Monitoring and Reporting Requirements.

(a) *Operating Requirements.* Operating requirements shall, at a minimum, specify that:

(1) Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water.

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

(3) Unless an alternative to a packer has been approved under § 146.12(c), the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Director and a

pressure, also approved by the Director, shall be maintained on the annulus.

(b) *Monitoring Requirements.*

Monitoring requirements shall, at a minimum, include:

(1) The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

(2) Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;

(3) A demonstration of mechanical integrity pursuant to § 146.08 at least once every five years during the life of the well; and

(4) The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the underground sources of drinking water, the parameters to be measured and the frequency of monitoring.

(c) *Reporting Requirements.* Reporting requirements shall, at a minimum, include:

(1) Quarterly reports to the Director on:

(i) The physical, chemical and other relevant characteristics of injection fluids;

(ii) Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

(iii) The results of monitoring prescribed under subparagraph (b)(4) of this section.

(2) Reporting the results, with the first quarterly report after the completion, of:

(i) Periodic tests of mechanical integrity;

(ii) Any other test of the injection well conducted by the permittee if required by the Director; and

(iii) Any well work over.

§ 146.14 Information to be Considered by the Director.

This section sets forth the information which must be considered by the Director in authorizing Class I wells. For an existing or converted new Class I well the Director may rely on the existing permit file for those items of information listed below which are current and accurate in the file. For a newly drilled Class I well, the Director shall require the submission of all the information listed below. For both existing and new Class I wells certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting

agency's files) and sufficiently identified to be retrieved. In cases where EPA issues the permit all the information in this Section must be submitted to the Administrator.

(a) Prior to the issuance of a permit for an existing Class I well to operate or the construction or conversion of a new Class I well the Director shall consider the following:

(1) Information required in 40 CFR 122.4 and 122.38(c);

(2) A map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

(3) A tabulation of data on all wells within the area of review which penetrate into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;

(4) Maps and cross sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(5) Maps and cross sections detailing the geologic structure of the local area;

(6) Generalized maps and cross sections illustrating the regional geologic setting;

(7) Proposed operating data:

(i) Average and maximum daily rate and volume of the fluid to be injected;

(ii) Average and maximum injection pressure; and

(iii) Source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

(8) Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

(9) Proposed stimulation program;

(10) Proposed injection procedure;

(11) Engineering drawings of the surface and subsurface construction details of the system;

(12) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any underground source of drinking water;

(13) Plans (including maps) for meeting the monitoring requirements in § 146.13(b);

(14) For wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under 40 CFR 122.44;

(15) Construction procedures including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program; and

(16) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by 40 CFR 122.42(a).

(b) Prior to granting approval for the operation of a Class I well the Director shall consider the following information:

(1) All available logging and testing program data on the well;

(2) A demonstration of mechanical integrity pursuant to § 146.08;

(3) The actual operating data;

(4) The results of the formation testing program;

(5) The actual injection procedure;

(6) The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone; and

(7) The status of corrective action on defective wells in the area of review.

(c) Prior to granting approval for the plugging and abandonment of a Class I well the Director shall consider the following information:

(1) The type and number of plugs to be used;

(2) The placement of each plug including the elevation of the top and bottom;

(3) The type and grade and quantity of cement to be used;

(4) The method for placement of the plugs; and

(5) The procedure to be used to meet the requirements of § 146.10(c).

§ 146.15 Mid-course evaluation requirements.

In compliance with 40 CFR 122.18(c)(4)(c)(ii) the data to be submitted on each Class I permit at six month intervals during the first two years of operation of the State program shall at a minimum include the following:

(a) The data required in § 146.14(a)(1);

(b) The data required in § 146.14(a)(3) including, under location, the distance and direction from the injection well;

(c) The depth to the top and bottom of any USDW;

(d) The distance to the nearest down-gradient water supply well;

(e) A description of the geology and hydrology of the area;

(f) The construction characteristics of the well;

(g) The corrective action proposed as well as that performed;

(h) The type and results of all mechanical integrity tests reported to the Director; and

(i) Any reporting to the Director under § 122.41(d).

Subpart C—Criteria and Standards Applicable to Class II Wells

§ 146.21 Applicability.

This subpart establishes criteria and standards for underground injection control programs to regulate Class II wells.

§ 146.22 Construction requirements.

(a) All new Class II wells shall be sited in such a fashion that they inject into a formation which has confining zones that are free of known open faults or fractures within the area of review.

(b) All Class II injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(1) Depth to the injection zone;

(2) Injection pressure, external pressure, internal pressure, and axial loading;

(3) Hole size;

(4) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(5) Corrosiveness of injected fluid and formation fluids;

(6) Lithology of injection and confining zones; and

(7) Type and grade of cement.

(c) The requirements in paragraph (b) of this section need not apply to existing or newly converted Class II wells located in existing fields if:

(1) Regulatory controls for casing and cementing existed for those wells at the time of drilling and those wells are in compliance with those controls; and

(2) Well injection will not result in the movement of fluids into an underground

source of drinking water so as to create a significant risk to the health of persons.

(d) The requirements in paragraph (b) of this section need not apply to newly drilled wells in existing fields if:

(1) They meet the requirements of the State for casing and cementing applicable to that field at the time of submission of the State program to the Administrator; and

(2) Well injection will not result in the movement of fluids into an underground source of drinking water so as to create a significant risk to the health of persons.

(e) Where a State did not have regulatory controls for casing and cementing prior to the time of the submission of the State program to the Administrator, the Director need not apply the casing and cementing requirements in paragraph (b) of this section if he submits as a part of his application for primacy, an appropriate plan for casing and cementing of existing, newly converted, and newly drilled wells in existing fields, and the Administrator approves the plan.

(f) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of these logs and tests shall be prepared by a qualified log analyst and submitted to the Director. At a minimum, these logs and tests shall include:

(1) Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Director in setting logging and testing requirements:

(i) For surface casing intended to protect underground sources of drinking water:

(A) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(B) A cement bond, temperature, or density log after the casing is set and cemented.

(ii) For intermediate and long strings of casing intended to facilitate injection:

(A) Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;

(B) Fracture finder logs; and

(C) A cement bond, temperature, or density log after the casing is set and cemented.

(g) At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells:

(1) Fluid pressure;

(2) Temperature;

(3) Fracture pressure;

(4) Other physical and chemical characteristics of the injection zone; and

(5) Physical and chemical characteristics of the formation fluids.

§ 146.23 Operating, monitoring, and reporting requirements.

(a) *Operating Requirements.*

Operating requirements shall, at a minimum, specify that:

(1) Except during well stimulation for enhanced recovery wells, injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case, shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water.

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore shall be prohibited.

(b) *Monitoring Requirements.*

Monitoring requirements shall, at a minimum, include:

(1) Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics;

(2) Monitoring of injection pressure, flow rate, and cumulative volume at least with the following frequencies:

(i) Weekly for produced fluid disposal operations;

(ii) Monthly for enhanced recovery operations;

(iii) Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and

(iv) Daily during the injection phase of cyclic steam operations;

(3) A demonstration of mechanical integrity pursuant to § 146.08 at least once every five years during the life of the injection well;

(4) Maintenance of the results of all monitoring until the next permit review (see 40 CFR 122.42(e)); and

(5) Hydrocarbon storage and enhanced recovery may be monitored

on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

(c) *Reporting Requirements.*

(1) Reporting requirements shall, at a minimum include an annual report to the Director summarizing the results of the monitoring required under paragraph (b) of this section. Previously submitted information may be included by reference.

(2) Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used.

§ 146.24 Information to be considered by the director.

This section sets forth the information which must be considered by the Director in authorizing Class II wells. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identified to be retrieved. In cases where EPA issues the permit, all the information in this Section is to be submitted to the Administrator.

(a) Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:

(1) Information required in 40 CFR 122.4 and 122.38(c);

(2) A map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes and water wells. The map should also show faults, if known or suspected. Only wells of public record are required to be included on this map. This requirement does not apply to existing Class II wells; and

(3) A tabulation of data on all wells within the area of review which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any

additional information the Director may require. This requirement does not apply to existing Class II wells.

(4) Proposed operating data:

- (i) Average and maximum daily rate and volume of fluids to be injected;
- (ii) Average and maximum injection pressure; and
- (iii) Source, and an analysis of the chemical, physical, radiological and biological characteristics of the injection fluid;

(5) Appropriate geological data on the injection zone and confining zones including lithologic description, geological name, thickness, depth and lateral extent;

(6) Geologic name, lateral extent and depth to top and bottom of all underground sources of drinking water which may be affected by the injection;

(7) Engineering drawings of the surface and subsurface construction details of the system;

(8) Proposed formation testing program;

(9) Proposed stimulation program;

(10) Proposed injection procedure;

(11) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of contaminating fluids into any underground source of drinking water;

(12) Plans for meeting the monitoring requirements of § 146.23(b);

(13) In the case of new injection wells, the corrective action proposed to be taken by the applicant under 40 CFR 122.44;

(14) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by 40 CFR 122.42(g).

(b) Prior to granting approval for the operation of a Class II well the Director shall consider the following information:

- (1) All available logging and testing program data on the well;
- (2) A demonstration of mechanical integrity pursuant to § 146.08;
- (3) The actual operating data;
- (4) The results of the formation testing program;
- (5) The actual injection procedure; and

(6) For new wells the status of corrective action on defective wells in the area of review.

(c) Prior to granting approval for the plugging and abandonment of a Class II well the Director shall consider the following information:

- (1) The type, and number of plugs to be used;
- (2) The placement of each plug including the elevation of top and bottom;

(3) The type, grade, and quantity of cement to be used;

(4) The method of placement of the plugs; and

(5) The procedure to be used to meet the requirements of § 146.10(c).

§ 146.25 Mid-course evaluation requirements.

(a) In compliance with 40 CFR 122.18(c)(4)(C)(ii) the data to be submitted on each new Class II permit at six months intervals during the first two years of operation of the State program shall at a minimum include the following:

- (1) The data required in § 146.24(a)(1);
- (2) The data required in § 146.24(a)(3) including, under location, the distance and direction from the injection well;
- (3) The depth to the top and bottom of any USDW;
- (4) The distance to the nearest down-gradient water supply well;
- (5) A description of the geology and hydrology of the area;
- (6) The construction characteristics of the well;
- (7) The corrective action proposed as well as that performed; and
- (8) Any reporting to the Director under § 122.41(d).

(b) The Director shall also submit the type and results of all Mechanical Integrity tests reported on existing wells and new (conversion only) wells during the first two years of operation.

(c) The Director shall require a temperature log or noise log, on a sample of Class II wells in cases where operators submitted cementing records to meet the requirement of § 146.08(c). The wells to be tested shall be chosen by a formal random selection procedure. The sampling shall be done on a field or pool basis and be statistically representative of the wells in that field or pool. At a minimum, the sample size for each State shall be 100 wells or 5 percent of the number of Class II injection wells in the State whichever is smaller. At least half of the wells tested must be existing wells.

Subpart D—Criteria and Standards Applicable to Class III Wells

§ 146.31 Applicability.

This subpart establishes criteria and standards for underground injection control programs to regulate Class III wells.

§ 146.32 Construction requirements.

(a) All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well

shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- (1) Depth to the injection zone;
- (2) Injection pressure, external pressure, internal pressure, axial loading, etc.;
- (3) Hole size;
- (4) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);
- (5) Corrosiveness of injected fluids and formation fluids;
- (6) Lithology of injection and confining zones; and
- (7) Type and grade of cement.

(b) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. At a minimum, such logs and tests shall include deviation checks conducted on all holes where pilot holes and reaming are used, at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(c) Where the injection zone is a water bearing formation, the following information concerning the injection zone shall be determined or calculated for new Class III wells:

- (1) Fluid pressure;
- (2) Temperature;
- (3) Fracture pressure;
- (4) Other physical and chemical characteristics of the injection zone;
- (5) Physical and chemical characteristics of the formation fluids; and

(6) Compatibility of injected fluids with formation fluids.

(d) Where the injection formation is not a water bearing formation, the information in paragraph (c)(3) of this section must be submitted.

(e) Where injection is into a formation which contains water with less than 10,000 mg/l TDS monitoring wells shall be completed into the injection zone and into any underground sources of drinking water above the injection zone which could be affected by the mining

operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

(f) Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

(g) Where the injection wells penetrate an USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

(h) In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:

- (1) The population relying on the USDW affected or potentially affected by the injection operation;
- (2) The proximity of the injection operation to points of withdrawal of drinking water;
- (3) The local geology and hydrology;
- (4) The operating pressures and whether a negative pressure gradient is being maintained;
- (5) The toxicity and volume of the injected fluid, the formation water, and the process by-products; and
- (6) The injection well density.

§ 146.33 Operating, monitoring, and reporting requirements.

(a) *Operating Requirements.* Operating requirements prescribed shall, at a minimum, specify that:

(1) Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate fractures in the confining zone or cause the migration of injection or formation fluids into an underground source of drinking water; and

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

(b) *Monitoring Requirements.* Monitoring requirements shall, at a minimum, specify:

(1) The analyses of the physical and chemical characteristics of the injected

fluid with sufficient frequency to yield representative data on its characteristics;

(2) Installation and use of continuous recording devices to monitor the injection pressure, flow rate and volume;

(3) Demonstration of mechanical integrity pursuant to § 146.08 at least once every five years during the life of the well for salt solution mining and geothermal wells only;

(4) Weekly monitoring of fluid level and the parameters chosen to measure water quality in the injection zone; and

(5) Quarterly monitoring of wells adjacent to the injection site to detect any migration from the injection zone into an USDW.

(6) All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

(c) *Reporting Requirements.* Reporting requirements shall, at a minimum, include:

(1) Quarterly reporting to the Director on required monitoring;

(2) Results of mechanical integrity and any other periodic test required by the Director reported with the first regular quarterly report after the completion of the test; and

(3) Monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

§ 146.34 Information to be considered by the Director.

This section sets forth the information which must be considered by the Director in authorizing Class III wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identified to be retrieved. In cases where EPA issues the permit, all the information in this section must be submitted to the Administrator.

(a) Prior to the issuance of a permit for an existing Class III well or area to operate or the construction of a new Class III well the Director shall consider the following:

(1) Information required in 40 CFR 122.4 and 122.38(c);

(2) A map showing the injection well(s) for which the permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, mines (surface and subsurface), quarries, public water systems, water wells and other pertinent surface features including residences and roads. The map should also show faults if known or suspected. Only information of public record is required to be included on this map;

(3) A tabulation of data on all wells within the area of review which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require;

(4) Maps and cross sections indicating the vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection;

(5) Maps and cross sections detailing the geologic structure of the local area;

(6) Generalized map and cross sections illustrating the regional geologic setting;

(7) Proposed operating data:

(i) Average and maximum daily rate and volume of fluid to be injected;

(ii) Average and maximum injection pressure; and

(iii) Source and an analysis of the chemical, physical, biological and radiological characteristics of the injection fluid.

(8) Proposed formation testing program to obtain an analysis of the physical, chemical and radiological characteristics of the receiving formation;

(9) Proposed stimulation program;

(10) Proposed injection procedure;

(11) Engineering drawings of the surface and subsurface construction details of the system;

(12) Plans (including maps) for meeting the monitoring requirements of § 146.33(b);

(13) Expected changes in pressure, native fluid displacement, direction of movement of injection fluid;

(14) Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into underground sources of drinking water;

(15) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by 40 CFR 122.42(g); and

(16) The corrective action proposed to be taken under 40 CFR 122.44.

(b) Prior to granting approval for the operation of a Class III well the Director shall consider the following information:

(1) All available logging and testing data on the well;

(2) A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution and geothermal wells pursuant to § 146.08.

(3) The actual operating data;

(4) The results of the formation testing program;

(5) The actual injection procedures; and

(6) The status of corrective action on defective wells in the area of review.

(c) Prior to granting approval for the plugging and abandonment of a Class III well the Director shall consider the following information:

(1) The type and number of plugs to be used;

(2) The placement of each plug including the elevation of the top and bottom;

(3) The type, grade and quantity of cement to be used;

(4) The method of placement of the plugs; and

(5) The procedure to be used to meet the requirements of § 146.10(c).

§ 146.35 Mid-course evaluation requirements.

In compliance with 40 CFR 122.18(c)(4)(C)(ii) the data to be submitted on each Class III permit at six month intervals during the first two years of operation of the State program shall at a minimum include the following:

(a) The data required in § 146.14(a)(i);

(b) The data required in § 146.34(a)(3) including, under location, the distance and direction from the injection well;

(c) The depth to the top and bottom of any USDW;

(d) The distance to the nearest down-gradient water supply well;

(e) A description of the geology and hydrology of the area;

(f) The construction characteristics of the well;

(g) The type and results of all mechanical integrity tests reported to the Director during the first two years of the program; and

(h) Any reporting to the Director under § 122.41(d).

Subpart E—Criteria and Standards Applicable to Class IV Injection Wells [Reserved]

Subpart F—Criteria and Standards Applicable to Class V Injection Wells

§ 146.51 Applicability.

This subpart sets forth Criteria and Standards for underground injection control programs to regulate all injection not regulated in Subparts B, C, D, and E.

(a) Generally, wells covered by this Subpart inject non-hazardous fluids into or above formations that contain underground sources of drinking water. It includes all wells listed in § 146.05(e) but is not limited to those types of injection wells.

(b) It also includes wells not covered in Class IV that inject radioactive materials listed in 10 CFR Part 20, Appendix B, Table II, Column 2, and injection wells used to store hydrocarbons which are gases at standard temperature and pressure.

§ 146.52 Inventory and Assessment.

(a) The owner or operator of any Class V well shall, within one year of the effective date of an underground injection control program, notify the Director of the existence of any well meeting the definitions of Class V under his control, and submit the inventory information required in 40 CFR 122.37(c)(1).

(b) Within three (3) years of approval of the State program the Director shall complete and submit to EPA a report containing:

(1) The information on the construction features of Class V wells, and the nature and volume of the injected fluids;

(2) An assessment of the contamination potential of the Class V wells using hydrogeological data available to the State;

(3) An assessment of the available corrective alternatives where appropriate and their environmental and economic consequences; and

(4) Recommendations both for the most appropriate regulatory approaches and for remedial actions where appropriate.

PART 122—MARINE SANITATION DEVICE STANDARD

2. 40 CFR is amended by revising Part 122 as follows:

§ 122.18 [Amended]

a. Section 122.18 is amended by deleting paragraph (c)(4)(ii) and substituting in lieu thereof the following:

* * * * *

(c) * * *

(4) * * *

(ii) In addition to complying with the requirements of paragraph (c)(4)(i) of this section, the Director shall provide the Administrator, on February 28th and August 31st of each of the first two years of program operation, the information required in 40 CFR 146.15, 146.25, and 146.35.

§ 122.37 [Amended]

b. Section 122.37 is amended by deleting paragraph (a) and substituting in lieu thereof the following:

(a) *Types of underground injection which may be authorized by rule.* The Director may authorize underground injection by rule as outlined in this paragraph.

(1) Injection into existing Class I, II (except existing enhanced recovery and hydrocarbon storage), and III wells may be authorized by rule for periods up to five years from the date of approval or promulgation of the UIC program. All such wells must be issued permits within the five year period.

(i) Rules under paragraph (a)(1) of this section shall specify that the authorization to inject shall expire:

(A) Upon the effective date of the permit or permit denial, if a permit application has been filed in a timely manner as specified in § 122.38(b)(1);

(B) If a permit application has not been filed in a timely manner as specified in § 122.38(b)(1); or

(C) Unless a complete permit application is pending, not later than five years after the approval or promulgation of the UIC program.

(ii) Notwithstanding the prohibition in § 122.33, rules under paragraph (a)(1) of this section authorizing Class II and Class III operations or projects in existing injection fields may allow them to continue normal operations until permitted, including construction and operation of new injection wells as part of the operation, provided the owner or operator maintains compliance with all applicable requirements.

(iii) Rules under paragraph (a)(1) of this section shall apply, and ensure compliance no later than one year after authorization by such rules, with the following requirements applicable to permittees, except the terms "permit" and "permittee" shall be read to include rules and those authorized by rule:

(A) Section 122.41(a)—(exemption from rule where authorized by temporary permits);

(B) Section 122.41(b)—(retention of records);

(C) Section 122.41(d)—(reporting within 24 hours);

(D) Section 122.41(e)—(180 days notice of abandonment);

(E) Sections 122.42(f) and 146.10—(plugging and abandonment);

(F) Operating, monitoring, and reporting requirements (except mechanical integrity) under § 146.13 (Class I), § 146.23 (Class II) and § 146.33 (Class III);

(G) Section 122.42(g)—(financial responsibility); and

(H) Section 122.45(c)—(requirements for wells injecting hazardous waste) applicable to class I wells injecting hazardous waste only.

(2) Injection into existing Class II enhanced recovery and hydrocarbon storage wells may be authorized by rule for the life of the well or project.

(i) Such rules promulgated by the Director shall apply the following requirements applicable to Class II permittees, except that the terms "permit" and "permittee" shall be read to include rules and those authorized by rule:

(A) Section 122.41(a)—(exemption from rule where authorized by temporary permit);

(B) Section 122.41(b)—(retention of records);

(C) Section 122.41(d)—(reporting within 24 hours);

(D) Section 122.41(e)—(180 days notice of abandonment);

(E) Sections 122.42(f) and 146.10—(plugging and abandonment);

(F) Section 122.42(g)—(financial responsibility);

(G) Section 146.08—(mechanical integrity);

(H) Section 146.22—(construction requirements); and

(I) Section 146.23—(operating, monitoring and reporting requirements).

(ii) Such rules shall establish compliance schedules for achieving the construction requirements no later than three years and other requirements no later than one year after authorization.

(3) Injection into existing Class IV wells injecting directly into USDWs may be authorized for a period not to exceed six months after approval or promulgation of the UIC program. Such rules shall apply the requirements of § 122.45(c).

(4) Injection into Class V wells may be authorized by rule until requirements under future regulations become applicable.

c. Section 122.37 is further amended by deleting paragraph (b) and relettering paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d).

d. Section 122.27 is further amended by deleting new paragraph (c)(1) and substituting in lieu thereof the following:

* * * * *

(c) * * *

(1) *Contents.* As part of the inventory, the Director shall require at least the following information:

(i) Facility name and location;

(ii) Name and address of legal contact;

(iii) Ownership of facility;

(iv) Nature and type of injection wells; and

(v) Operating status of injection wells.

(Note.—This information is requested on national form "Inventory of Injection Wells," OMB No. 158-R0170).

§ 122.41 [Amended]

e. Section 122.41 is amended by adding a new sentence at the end of paragraph (e) as follows:

* * * * *

(e) * * * With the notice, the permittee shall submit a revised plugging and abandonment plan updated as appropriate in compliance with § 122.42(f) and § 146.10.

§ 122.17 [Amended]

f. Section 122.17(f) is amended by adding a new paragraph (3) as follows:

(f) * * *

(3) Amend a plugging and abandonment plan which has been updated under § 122.41(e).

[FR Doc. 80-18963 Filed 6-2-80; 8:45 am]

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United States Federal Register

Tuesday
June 24, 1980

Part III

Environmental Protection Agency

Primary Nonferrous Smelter Orders;
National Rules

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 57**

(FRL 1488-2)

**Primary Nonferrous Smelter Orders;
National Rules****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Final rules.

SUMMARY: These rules establish the minimum required contents of initial primary nonferrous smelter orders (NSOs) issued under section 119 of the Clean Air Act, and the criteria and procedures EPA will use in issuing NSOs and in evaluating NSOs issued by States. Under section 119, NSOs may be granted to eligible smelters by States, with EPA approval, or by EPA. An NSO permits a smelter to use interim constant control technology in combination with dispersion techniques to maintain the national ambient air quality standards (NAAQS) for sulfur dioxide, instead of complying with its state implementation plan (SIP) emission limitation. These rules apply only to initial NSOs, which may extend through January 1, 1983. Second NSOs, extending through January 1, 1988, may also be granted but are not covered by these rules.

DATES: These rules are effective July 24, 1980. Judicial review of these rules may be obtained by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before August 25, 1980.

ADDRESSES: Docket Number DSSE-78-1, which contains the documents upon which these rules are based, is open for public inspection and copying between 8 A.M. and 4 P.M. Monday through Friday at:

U.S. Environmental Protection Agency,
Central Docket Section, Room 2902,
Waterside Mall, 401 M Street, S.W.,
Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
David Rochlin, Division of Stationary
Source Enforcement (EN-341), 401 M
Street, S.W., Washington, D.C. 20460
(202) 755-2542

SUPPLEMENTARY INFORMATION:

The remainder of this notice discusses the basis and purpose, background, and contents of the rules promulgated today. This notice also responds to the major comments on the proposed regulations and explains the reasons for major changes in the promulgated rules from the proposed regulations. EPA has also prepared a Response to Comments document, which contains more detailed responses on a number of issues raised by commenters, and addresses certain comments of less major importance.

That document is part of the basis and purpose of this rulemaking, and is available in the rulemaking docket and at the address stated above. Except where changes have been made in the rules, the contents of the notice accompanying EPA's proposal of these rules should also be considered a part of the basis and purpose of the final rules.

Background

On January 31, 1979, EPA proposed national rules to implement new section 119 of the Clean Air Act (44 FR 6284). Corrections of the proposal were published on February 27, 1979 (44 FR 11096). The rules proposed a new Part 57 of the Code of Federal Regulations and included criteria for deciding whether a smelter is eligible for an NSO. Under the proposal, a smelter would have been found eligible if the Administrator determined, based on the financial information submitted in the smelter owner's application, that the smelter could not afford the control equipment necessary for it to meet its SIP emission limitation for sulfur dioxide. The proposed rules also provided for the establishment of certain minimum interim requirements to ensure that the smelter's emissions would not result in violations of the NAAQS for sulfur dioxide. These requirements included the use of dispersion-dependent techniques (tall stacks and supplementary control systems), the evaluation and control of fugitive emissions, the assumption of legal liability by the smelter for violations of the NAAQS in the areas affected by its emissions, and related monitoring and reporting requirements. The proposed rules also would have required the efficient use of an interim level of continuous emission reduction technology, and would have established criteria and procedures for a waiver of that requirement for any smelters without such controls which would be forced to close by the imposition of the interim control requirement.

Smelters receiving first NSOs would also have been required to conduct or participate in research and development projects to develop improved means for meeting SIP requirements. The regulations would have allowed a temporary suspension of SIP requirements during the processing of NSO applications, and provided procedures for that processing.

EPA received comments on the proposed rules from companies operating smelters, from people living in the vicinity of smelters, and from other interested members of the public. Public hearings were held on the proposal in Tucson, Arizona; Seattle, Washington;

and Arlington, Virginia. Twenty-seven written submissions were received during the comment period, and twenty-two persons testified at the hearings. EPA considered all written and oral comments in developing the final regulations.

**Basis and Purpose of the Final
Regulations**

Although the basic approach and framework of the final rules follows that of the proposed rules, a number of changes have been made as a result of public comment. The following discussion is organized to correspond to the rules, and contains a summary of the major comments, the Administrator's responses to those comments, and an explanation of the changes.

I. Subpart A—General**A. Eligibility of Smelters for Initial
NSOs**

The proposed criteria and procedures for determining whether a smelter is eligible for a first NSO received more comment than any other aspect of the proposed rules. Under the proposal, a smelter operator would have been required to submit specified technical and financial information to EPA at the time of an application for an NSO. EPA would then have determined, using a particular financial test, whether the smelter could afford the equipment necessary to meet its state implementation plan (SIP) emission limitation for sulfur dioxide. A smelter found unable to afford that equipment would have been considered eligible for an NSO, assuming it met certain other basic criteria. If the smelter had applied to the State for the NSO, EPA would have transmitted its finding on affordability to the State, before the State issued the NSO.

This approach to the eligibility determinations was opposed in comments by many of the large corporate smelter operators. The main arguments made by these companies were that EPA lacked the authority to adopt either any financial test or a single financial test for determining whether it is economically feasible for a smelter to meet its SIP emission limit, that the test proposed by EPA is the wrong one, and that the information requirements for the test are too burdensome.

**1. Does EPA have the authority to use
any financial test in determining
whether smelters are eligible for NSOs?**

The Kennecott Copper Corporation argued in substance that EPA has no authority to consider the affordability of any equipment beyond existing acid

plants in making the eligibility determination required by section 119(b)(3). According to this comment, any smelter now using an acid plant should be found eligible for an NSO if it is not currently meeting its SIP emission limit, irrespective of whether it can afford the additional equipment necessary to meet that emission limit.

This comment is wholly at odds with the congressional scheme and intent underlying section 119. First, it conflicts with the plain meaning of the statute. The comment advocates an industry-wide finding that no more than existing acid plants are adequately demonstrated to be reasonably available yet section 119(b)(3) explicitly calls for a smelter-by-smelter determination. That subsection also clearly calls for an evaluation of the affordability of the control technology (or "means of emission limitation") which would enable the smelter to meet its SIP emission limit, with no mention of the smelter's existing controls. The Administrator believes that if Congress had intended the existence of an acid plant to be the focus of the determination, it would have said so explicitly, as it did in section 119(d)(4). Kennecott's reading would, in addition, make meaningless the interim constant control requirement of section 119(d)(1)(C). In short, under the statutory scheme, a smelter is eligible for an NSO only until it can afford the necessary constant controls, and it ordinarily must use an acid plant in the interim. Kennecott's reading would create another scheme entirely.

Second, Kennecott's reading of section 119(b)(3) is inconsistent with the existing policy Congress adopted in enacting section 119. In enacting section 119, Congress intended to adopt the main elements of EPA's existing smelter program.¹ Under that program, smelters were eligible on an interim basis to use dispersion techniques instead of meeting their SIP emission limits only if the immediate imposition of the full constant control requirements was not economically feasible. This determination was smelter-specific. The only industry-wide determination was that the use of sulfuric acid plants on all strong sulfur dioxide gas streams was reasonably available control technology for every smelter, i.e. it was a minimum requirement applicable to all smelters as a condition of the interim use of dispersion techniques. The policy always required the adoption of further controls as advances in technology made them economically feasible.

Allowing smelters to use dispersion techniques instead of constant controls, irrespective of the economic need of a particular smelter to do so, would also have been diametrically opposed to the direction Congress took for all other sources in the 1977 amendments to the Clean Air Act. In the new section 123 of the Act, Congress expressed strong disapproval of dispersion techniques, and explicitly prohibited all other sources from using dispersion techniques in lieu of constant controls to meet national ambient air quality standards. Constant control emission limitations must be met by other sources irrespective of the economic or technological feasibility of doing so,² and section 120, also enacted in 1977, imposes severe economic penalties for noncompliance with those emission limitations. To read section 119, a provision intended to respond to problems of economic and technical feasibility, as allowing all smelters to use dispersion techniques instead of constant controls *irrespective of economic feasibility* would give inadequate recognition to the basis thrust of the 1977 amendments and the underlying congressional intent.

Such a reading would also ignore the widely varying circumstances of the various smelters. The process technology now in use at American smelters ranges from the most antiquated to the most advanced in the world, and sulfur dioxide control levels range from zero to more than ninety percent. The meteorological and terrain conditions which determine the smelters' emission limitations also vary widely among the smelters, and the amount of further control required to meet emission limits varies widely with those conditions. The economic vitality of the different smelters also diverges widely, as a result of differences in smelting costs, mining costs, labor costs, location, and the like. As a result, the financial ability of a given smelter to meet its SIP emission limitation cannot be accurately calculated based simply on its existing control level. To do so would ignore these vital differences in circumstances, and make the eligibility determination meaningless.

Finally, basing the eligibility determination simply on the existence of an acid plant would ignore advances in technology, contrary to the intent of Congress. Although it did not appear to EPA several years ago that many smelters would be able to afford the further control technology that was then technically feasible, there have been significant advances in the cost-

effectiveness of available process and control technology with its increased use domestically and abroad. For example, when EPA proposed new source performance standards (NSPS) for copper smelters in 1974, only one kind of flue gas desulfurization system (DMA scrubbing) was examined, and its use was not proposed as a basis for the standards. Information in the rulemaking docket, however, shows that significant advances in smelting sulfur dioxide weak stream control have occurred in Canada, Europe, and Japan. Basing eligibility solely on acid plants would ignore these developments, contrary both to the technology-forcing character of the Act as a whole, and to the provisions of section 119 itself. The Administrator believes that had Congress intended to exclude consideration of technical advances and key eligibility under section 119 to a single technology, it would have done so explicitly.

2. Does section 119 permit the Administrator to adopt a single financial test for determining whether a smelter can afford the equipment necessary to meet its SIP emission limit?

Certain companies commented that EPA lacks the authority under section 119 to prescribe the use of a particular financial test for determining whether a smelter can afford the equipment needed to meet its SIP emission limit. According to these commenters, EPA may not adopt a single financial test both because it had not done so before the adoption of section 119, and because Congress intended the Agency merely to review affordability determinations made by the State. In the Administrator's view, these assertions raise two basic questions.

(a) First, did Congress intend the States to make a finding on affordability before the final determination by EPA? Under the proposed rules, the States would have had no role in determining whether particular smelters could afford the equipment necessary to meet their SIP emission limits. Various commenters argued that Congress intended the States to make an initial finding on affordability when smelters applied to the States for NSOs. The Administrator has concluded that these comments have merit, and that the proposed rules gave inadequate attention to this question.

Upon examination, the Administrator believes that Congress intended the States to evaluate the smelters' applications and to make initial findings on affordability. This view is based primarily on sections 119(a)(1) and 119(a)(2)(C). Under section 119(a)(1), the

¹ This program is discussed in more detail below.

² *Union Electric Co. v. EPA*, 427 U.S. 246 (1976).

Administrator is to hold a hearing on the question of reasonably available control technology for a smelter if he disapproves a State's NSO. Under section 119(a)(2)(C), any NSO must be accompanied by a statement of the findings upon which it is based. The Administrator believes that eligibility is one of the findings intended to be included in that statement.

These provisions, and the right of a State to issue an NSO, can only be meaningful if the State makes an initial finding on eligibility. The final rules therefore provide for the submission of the relevant information to the States as part of the NSO application and for the States to make initial findings.

(b) Second, does section 119 preclude EPA from establishing a single, uniform set of criteria for making the determinations required by section 119(b)(3)? The proposed rules contained a specific set of financial criteria that would be used by the Administrator in making the affordability determinations required of him by section 119(b)(3). The comments of the companies argued that EPA could not adopt any single, uniform set of criteria for making that judgment, either because the Agency had not published such a test before enactment of section 119, or because Congress intended to allow the States to make the determination according to whatever criteria they chose.

These arguments plainly misconstrue the meaning and intent of section 119. As most commenters acknowledged, under section 119(b)(3) eligibility for an NSO is contingent on the affordability of the necessary controls, "as determined by the Administrator." The inclusion of this provision in the statutory criteria for eligibility shows that Congress intended EPA to make an independent judgment in reviewing a State's finding on affordability, and not to confine its review under section 119(a)(1) of State-issued NSOs to whether the State had made some finding on affordability. This conclusion is supported by the provisions of section 119(a)(1) itself, requiring EPA to hold a hearing when its determination differed from a State's. That provision would have no substance unless EPA were obligated to make its own determination.³

If EPA is to make its own determinations, the only remaining question is whether the Agency may prescribe a set of uniform criteria for determining what circumstances constitute an inability to afford the necessary equipment. The Administrator believes that, contrary to the companies'

arguments, he is fully authorized to establish such criteria in these rules.

First, section 301(a) of the Act empowers the Administrator to prescribe any rules necessary for carrying out his duties under the Act. Congress specifically contemplated the exercise of this authority to promulgate rules governing the NSO program, and therefore enacted judicial review and procedural provisions (sections 307(b)(1) and 307(d)(1)(G)) applicable to these rules. Given the great importance of eligibility determinations, and given the Administrator's obligation to make those determinations independently in issuing NSOs and in reviewing State-issued NSOs, it does not seem likely that Congress intended to prohibit the Administrator from establishing in advance the criteria and procedures he will use in making affordability determinations. The Administrator believes that if Congress had intended to do so, the statute would contain some evidence of that.

Second, the fact that EPA had not previously published financial criteria for making that determination in as much detail as in these rules does not suggest that Congress intended to prohibit it from doing so. As many commenters noted, Congress intended in enacting section 119 to ratify the main elements of EPA's existing policy in this area. Under that policy, the financial basis for eligibility was that requiring the immediate installation of the necessary technology at a particular smelter was not economically feasible.

This financial criterion was also expressed by the phrase "economically unreasonable." In enacting section 119, however, Congress did not even confine the Administrator's discretion by using those terms, as it could have; instead, it left the Administrator free to exercise his discretion as necessary, telling him simply to make the determination "taking into account the cost of compliance * * *".⁴

The need to assure consistent and accurate treatment to the various smelters in making those determinations is a third persuasive reason for the Administrator's view that these national rules should contain the uniform, detailed criteria and procedures that EPA will use for making the affordability determinations.⁵

The creation of some economic criteria obviously cannot be avoided. Even if they are not established in these

rules, they will be established on an *ad hoc*, incremental basis as EPA evaluates NSO applications or NSOs submitted for approval by the States. In the Administrator's judgment, however, such an incremental process of establishing criteria would not result in affordability determinations that are either accurate or consistent.

This judgment is based on the Agency's experience with the smelter program that Congress has adopted in section 119. This experience shows that detailed information and specific, uniform procedures are necessary to make informed and consistent judgments about the ability of applicant smelters to afford the necessary control technology. This is due to the integrated relation of many smelters to mining and refining facilities under the same or related ownership. This integration necessitates the use of detailed disaggregated data to ascertain true costs and transfer values in the absence of actual market values. The size and complexity of the multinational corporations which operate most American smelters can, in the absence of disaggregated data, obscure the financial relationship and value of a smelter to the corporation. Differences in the way various companies aggregate data into financial categories can also result in inaccurate application of any financial analysis unless the data are first disaggregated. Indeed, the Administrator believes that his earlier failure to apply these detailed procedures to all smelters uniformly may have delayed compliance with SIP requirements by some smelters which can afford to do so.

The Administrator therefore believes that it is a reasonable exercise of his discretion to specify in advance the financial criteria and procedures he will use to determine eligibility. This also allows States and smelter owners to know in advance how EPA's determinations will be made, and to avoid EPA disapproval of State-issued NSOs due to inadequate affordability demonstrations.

3. *Has EPA chosen an appropriate means of taking into account the cost of further controls?*

A number of companies commented that the Net Income Test proposed by EPA was inappropriate for "taking into account the cost of compliance" as required by section 119(b)(3). The significant comments in this area were made jointly by Asarco and Magma. According to these comments, Congress intended EPA to take cost into account in a specific way: by protecting against any significant decrease in profitability, sales, or mining activity. Asarco,

³ *Kennecott Copper Corp. v. Train*, 572 F.2d 1349 (9th Cir. 1978).

⁴ EPA did in fact use financial tests similar to the Net Income Test to determine the feasibility of requiring compliance with SIP emission limits at certain smelters under the Agency's existing policy.

⁵ Cf. section 301(a)(2) of the Act.

Magma, and Phelps Dodge therefore urged EPA to adopt the "Replacement Test" contained in the Asarco/Magma comments instead of the Net Income Test.

After careful and detailed consideration, the Administrator has decided to retain the Net Income Test, with certain modifications, in the final rules. This decision is based both on his view of the intent of Congress and on the related conclusion that certain features of the Replacement test, in comparison to the Net Income test, as modified, make it fundamentally unsuitable as a financial eligibility test under section 119(b)(3).

(a) *What did Congress intend?* The Asarco/Magma comments argue that Congress did not intend the Administrator to exercise his discretion in "taking into account the cost of compliance" under section 119(b)(3), but instead intended that he consider cost in a specific way: by protecting against any significant decrease in profitability, sales, or mining activity. According to these comments, this reading of section 119 is mandated by its legislative history, showing that Congress intended those tests because EPA had adopted them and because they were needed to protect the industry from foreign competition.

The Administrator believes that these comments seriously misread the statute and are incompatible with the congressional intent. First, the Asarco/Magma argument is inconsistent with the statutory language itself. Section 119(b)(3) simply tells the Administrator to take the cost of compliance "into account," leaving to his discretion the specific manner of doing so. Previous judicial interpretation of similar language in the Act indicates that such language does not imply any specific method of considering costs, see, *Portland Cement Association v. Train*, 486 F.2d 375 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974), and it is well-established generally that such language does not entail a particular kind or weight of consideration of the named factor. See, *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n. 21 (1976); *Aberdeen & Rockfish R. Co. v. SCRAP*, 422 U.S. 289, 319 (1975); *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978); *New York v. United States*, 331 U.S. 284, 347-349 (1947).

If Congress had intended that the Administrator apply a specific test, such as that suggested by Asarco/Magma, it could easily have said so, as it did under section 119(d)(2). There, Congress specified that waivers of the interim constant control requirement are to be available only when "such requirement

would be so costly as to necessitate permanent or prolonged temporary cessation of operations of the smelter." In the Administrator's view, the contrast in specificity between these two provisions of the same section is too marked to be ignored.

The Administrator's interpretation of section 119(b)(3) is based equally on his understanding of the congressional intent underlying section 119. As the Asarco/Magma comments recognize, that intent, clearly expressed in the legislative history of section 119, was to adopt the main elements of EPA's existing smelter policy. This is evident from the House Report,⁶ which explained that the intent of the provision which was enacted as section 119 was to "confirm the authority of the EPA to pursue the Agency's present smelter policy, and (to) support the holding in *Kennecott Copper Corp. v. EPA*, 526 F.2d 1149 (9th Cir. 1975), *cert. den.* 425 U.S. 935 (1976)."

The Asarco/Magma assertion that eligibility for the use of supplementary control systems (SCS)⁷ under EPA's existing smelter policy was based on a decrease in profitability, sales, or mining activity is simply wrong. The policy permitted a smelter to use SCS on an interim basis if immediate compliance with its SIP emission was economically infeasible,⁸ i.e., if the smelter could not support the expenditure and keep operating. This was explicitly recognized in the *Kennecott* case endorsed by the House committee. In that case, the court specifically stated that EPA's policy was to permit the interim use of dispersion techniques when full constant controls were not "economically feasible,"⁹ and quoted the following statement by EPA as explaining the meaning of feasibility:

"[T]he selective use of Supplementary Control Systems * * * to attain and maintain the ambient standards is consistent with the Clean Air Act when the only alternatives are permanent production curtailment, shutdown, or delays in the attainment of the national standards * * *."

* * * * *

⁶H.R. Rep. No. 95-294, 95th Cong., 1st Sess. at 61 and 67-68. The Senate Report also expresses an intent to ratify EPA's existing smelter policy. S. Rep. No. 95-127, 95th Cong., 1st Sess. at 25.

⁷Supplementary Control Systems (SCS) are also sometimes called Intermittent Control Systems (ICS), in recognition that they operate through intermittent production curtailment.

⁸Where EPA performed detailed analysis of the economic feasibility of full constant controls under its existing policy, it used an opportunity cost test related to the Net Income Test, and did not focus on profitability. A detailed financial analysis was performed for the Asarco Tacoma and Anaconda smelters.

⁹526 F.2d at 1151.

EPA will approve such measures as intermittent production curtailment and use of dispersion techniques, including tall stacks, as an addition to available constant control measures, until such time as the treatment of weak gas streams can be accomplished through reasonable retrofit control techniques. Evaluation of the availability of constant control techniques which may be developed in the future will be made using the same criteria as were used in developing these regulations. Namely, (Supplementary Control Systems) will continue to be allowed where permanent production curtailment, shutdown, or delays in attainment of national standards are the only other alternatives. 40 FR 5508, 5510 (Feb. 6, 1975)."

526 F.2d 1151-1152, n. 13 (emphasis added).¹⁰

This policy had its roots in 1972, in EPA's earliest proposed SIP rulemaking for a number of western powerplants and smelters. EPA stated that techniques such as intermittent production curtailment were not sufficiently reliable to be acceptable as permanent means of control, and that by July 31, 1977, the final attainment date for the smelters involved, those smelters would be expected to meet their SIP emission limitations through the use of scrubbers or process changes where necessary. The Agency also stated, however, that until that date, smelters which could not meet their emission limits through the use of sulfuric acid plants treating all strong streams could use SCS as a supplement to such acid plants. Active interim efforts to develop improved technology were also required. 37 FR 15094-15095 (July 27, 1972).

EPA further amplified this policy about a year later, in proposing amendments to 40 CFR Part 51. 38 FR 25697 (September 14, 1973). The Agency stated there that as a result of further evaluation of the reliability of the use of SCS by isolated sources of sulfur dioxide, it would permit the use of SCS by powerplants and smelters under certain circumstances beyond applicable SIP attainment date deadlines. It was here that the fundamental test of eligibility for the use of SCS was first established: the selective use of SCS would be allowed only "in cases where permanent production curtailment, shutdown, or delays in attainment of the national standards are the only other alternatives." 38 FR 25698. Although

¹⁰Permanent production curtailment or shutdown would occur where no other technically feasible means of reducing emissions on a constant basis existed, or where technically feasible controls were not economically feasible. Delays in attainment of standards would occur where technically and economically feasible controls could not be installed by the attainment date in the state implementation plan.

EPA believed that most smelters would prove eligible, each candidate source was required to demonstrate its eligibility on a case-by-case basis, and was required to conduct research to develop improved controls. *Id.* In the interim, each source was also required to apply available technology fully; in the case of smelters, available technology was at least the treatment of strong gas streams by sulfuric acid plants. *Id.*

The basis for EPA's concern about smelters was that

Many existing nonferrous smelters would require emission reductions in excess of 90 percent in order to avoid violations of the national standards for sulfur dioxide during all adverse meteorological conditions. Constant emission limitation techniques capable of achieving this degree of emission reduction are not available for every smelter. The alternatives in most cases will be either to close these facilities (or drastically curtail production), or apply supplementary control systems. *Id.*

It is evident, therefore, that the focus of the Agency's policy was from its inception on the ability of these facilities to continue operating, not on underwriting their existing level of profits. As the Administrator put it in that 1973 publication, "it does not appear to be in the public interest to require shutdown or permanent curtailment of production for existing sources which could temporarily use supplementary control systems to attain and maintain the national standards." *Id.*

EPA continued to adhere to this policy in proposing Nevada SIP regulations which were the subject of the *Kennecott* case cited by the House Report. 39 FR 38104 (October 29, 1974). The Agency again stated there that SCS could be used on a temporary basis to meet ambient standards "when the only alternatives are permanent production curtailment, shutdown, or delays in the attainment of the national standards." 39 FR 38105. EPA also applied the other elements of the policy, i.e., the smelter was required (1) to treat all strong (converter) gas streams in an acid plant, (which EPA believed was required by *N.R.D.C. v. EPA*, 489 F. 2d 390 (5th Cir. 1974), in which the court held that dispersion techniques could be allowed only if full constant control was infeasible and if the maximum control achievable was used in the interim); (2) to assume liability for violations of NAAQS in the area affected by its emissions; and (3) to conduct research to develop improved controls.

EPA reiterated the policy's basis for eligibility and its interim requirements in promulgating the Nevada plan. 40 FR

5508 (February 6, 1975).¹¹ It was this policy which was before the Ninth Circuit and the Congress, and this was the policy specifically endorsed by both. The policy focused on the feasibility of full constant controls, not the effects on a smelter's profits. The suggestion by Asarco/Magma that EPA should now shift its focus to profitability would therefore represent dramatic change in the policy ratified by Congress.¹²

The Asarco/Magma assertions that the EPA smelter policy in effect when section 119 was enacted was based on profitability ignore this actual administrative history of the policy. Instead, the assertions are based on a reference in the House Report to certain statements made by EPA in promulgating new source performance standards (NSPS) for copper, lead, and zinc smelters. H.R. Rep. No. 95-294, supra at 63. In explaining why the NSPS smelter standards were not based on the use of scrubbing, EPA stated that the costs of using scrubbers on new smelters were too large for such smelters to absorb without a significant decrease in profitability, a loss in sales due to price increases, or a decrease in mining activity if the costs were passed back to the mines. See 41 FR 2332, 2334 (January 15, 1976).

The Administrator does not regard the House Report's reference (at page 63) to this discussion from the NSPS preamble as an implicit direction to construct a profitability test of financial eligibility under section 119(b)(3). The Committee's intention as discussed above and as expressly stated in the House Report, was to "confirm the authority of the EPA to pursue the Agency's present smelter policy, and support the holding in *Kennecott*." H.R. Rep. No. 95-294, supra at 61. The passage on page 63 is used simply to illustrate the context of the problem being addressed by section 119. The passage itself actually says in fact that "[t]he difficulties involved are highlighted" in the NSPS publication.

In addition, the NSPS preamble language alluded to was intended by EPA to refer solely to projected financial effects on new smelters of requiring various possible controls. The analysis performed for those NSPS purposes was

¹¹ EPA also adhered to this policy in proposing regulations for the Arizona SIP. 40 FR 49362 (October 22, 1975). The policy was also stated again, in part, in the Agency's Stack Height Increase Guideline, 41 FR 7450; (February 18, 1976). It should be noted, however, that the major focus of the Guideline was the amount of credit to be granted in SIPs for the use of tall stacks, not the use of SCS.

¹² It should also be noted that the suggestion that EPA focus on profitability, sales levels, and the levels of mining activity is internally inconsistent; these factors might be affected in contradictory ways by any given eligibility test.

not formulated to evaluate the effects of requiring controls on any existing smelter, and an altogether different kind of analysis, one in which profitability would not have a comparable role, would be required to do so.¹³ The Committee's reference to this language is therefore relevant only to new sources and should not be viewed as expressing an intention that EPA use any particular test of eligibility in the different circumstances relevant to existing sources.¹⁴

The conclusion that this passage in the House Report was simply intended to illustrate the overall circumstances facing the industry is reinforced, finally, by the Report's quotation, on page 63 immediately following the NSPS discussion, of certain excerpts from EPA's Stack Height Increase Guideline. Significantly, after stating that "[r]etrofitting existing smelters involves additional problems," the Report quotes portions of the Guideline discussing those problems as a basis for granting increased stack height credit, *not for permitting the use of SCS*, the main feature of both EPA's existing smelter policy and section 119. The Report thus fails even to suggest a link between profitability and the existing Agency-SCS policy for smelters. The Administrator therefore believes that, in light of the overall administrative and legislative history of section 119, and of the 1977 Amendments as a whole,¹⁵ Congress intended EPA to exercise discretion in taking cost into account, and did not intend to specify profitability as the financial criterion of a smelter's eligibility for an NSO.

(b) *Is the "Replacement Test" a more appropriate measure of the economic feasibility of requiring full constant controls than EPA's Net Income Test?* The Asarco/Magma comments also argue that EPA should not only base eligibility on smelter profitability, but should do it in a particular way. These two companies, joined by the Phelps Dodge Corporation, urge EPA to discard the Net Income Test and adopt instead the "Replacement Test" contained in the Asarco/Magma comments. These

¹³ See note 8, above. In brief, this is because the NSPS analysis quoted is based on a hypothetical new smelter of hypothetical size and configuration at an assumed location, while the analysis of an existing smelter would be based on its existing cost structure, size, configuration, and location. Also, as discussed more fully below, the nature of the decision facing investors in a new facility is very different from that facing the management of an existing source.

¹⁴ See also note 21 below.

¹⁵ The overall policy of the Clean Air Act in this regard and the policy implications of adopting a test based on profitability are discussed further below, in connection with the Asarco/Magma "Replacement Test."

comments assert that the Replacement Test is a more appropriate measure of the economic feasibility of requiring full constant controls than is the Net Income Test.

The Asarco/Magma comments label as the primary defect of the Net Income Test its use of Liquidation (salvage) value as the measure of a candidate smelter's capital base.¹⁶ According to these comments, an adequate net present value test of whether a smelter can afford to invest in necessary emission controls would instead use the facility's replacement value, as defined in the Replacement Test proposed by Asarco/Magma.

After careful and detailed consideration, however, the Administrator has concluded that the use of replacement value as a measure of capital base would be wholly inappropriate for use in an eligibility test under section 119, and that the use of liquidation value is far preferable under the circumstances. This view stems from four fundamental flaws in the Replacement Test: (1) Its inability to require compliance at strong smelters while ensuring against the closure of marginal smelters, (2) its failure to take into account the required nature of the pollution control investment in evaluating a smelter's ability to support that investment, (3) its consequent distortion of the evaluation of economic feasibility through its focus on an illusory opportunity; and (4) its implicit reversal of the basic social and economic policy of the Clean Air Act.

(1) The Basic Purpose of the Eligibility Test is Not Accomplished by the Use of Replacement Value.

In choosing an eligibility test for taking the cost of compliance into account under section 119(b)(3), EPA sought to follow Congress' intent that the Agency apply the same basic criteria as it had under its existing smelter policy. As discussed above, that policy permitted deferral of full SIP compliance and the interim use of SCS if immediate compliance with required SIP measures was not economically feasible for a particular smelter. An acceptable test thus must not only require compliance at financially strong smelters, but must also protect against smelter closures that could be brought about by the immediate imposition of control requirements at marginal smelters. The proposed eligibility test chosen for section 119, therefore, was intended to

evaluate the consequences of requiring immediate compliance, and to determine whether immediate compliance was economically feasible.

The Agency's proposed eligibility test [the Net Income Test] does this through the use of "net present value" cash flow analysis. The Net Income Test is a modified form of "opportunity cost" or "closure" test, a standard tool for evaluating the feasibility of a required investment. An opportunity cost test simulates the response of the operators or investors to such a requirement by comparing the value to them of their options and assuming that they will act to maximize the return on their investments. The opportunity cost test thus compares the value of making the investment in the smelter and continuing operation with the value of liquidating the firm's investment in the smelter and investing the proceeds elsewhere. The required investment would be deemed feasible (i.e., net present value is positive) under an opportunity cost test only if the firm would earn more by installing the equipment (and making any other expenditures for modernization, for maintenance, for compliance with other Government regulations, and the like) and continuing to operate the smelter than by liquidating its investment in the smelter and placing the proceeds in another investment opportunity open to the firm.¹⁷

The Net Income Test devised by the Agency provides more protection for marginal smelters than would a strict opportunity cost test. It does this by allowing a smelter operator to deduct all remaining depreciation on its assets from its projected future net cash flow before determining whether it can afford the pollution control expenditure. By deducting depreciation as well as the future expenditures noted above, this procedure deliberately understates the value of the smelter's future earnings, and provides an additional financial cushion to the smelter operator. Although section 119 does not require the Administrator to provide this additional relief, he has made the policy decision to do so in order to ensure, in light of the impossibility of making absolutely accurate projections, that marginal smelters Congress would have expected to be eligible for NSOs will not be found ineligible on "close calls." The Administrator believes this decision to be within the discretion afforded by

section 119(b)(3), and consistent with the intent of Congress.

This kind of test fully protects the viability of the industry. It ensures that the investments will not be required unless they are economically feasible, and therefore that existing smelters will continue to operate and modernize as they would in the absence of SIP requirements. In addition, the test protects against a loss in sales by finding a smelter eligible unless it can support the investment *without* raising its prices above prevailing levels. The test's assumption in valuing the earning power of any smelter—and thus all American smelters—that domestic metal prices are constrained by worldwide production, supply, and demand also protects against foreign competition in determining feasibility.

The Asarco/Magma comments suggest that, in judging whether the smelter can afford to make the investment, EPA use the replacement cost of the smelter (as defined in the Replacement Test contained in the companies' comments) instead of liquidation value as the basis for comparison (in the net present value calculation) with the worth of the smelter's future earnings. Replacement value is, however, fundamentally unsuitable for this purpose, because it fails to accomplish the basic purpose of the eligibility test: identifying those smelters at which immediate compliance with SIP emission limits is not economically feasible, while requiring compliance at those smelters which can now afford controls.

This defect results from the failure of the Replacement Test to examine either the actual situation of the smelter or the actual alternatives facing the smelter operator. Because it examines the cost of constructing a *hypothetical* replica of the existing smelter, replacement cost is insensitive to the *actual* physical state of the smelter. The use of replacement cost also ignores the actual technological alternatives available to the smelter operator, as well as the ability of new technology to achieve production cost savings.

As a result of these features, as well as other undesirable properties, the Replacement Test is unable to simulate the decision of a smelter operator faced with a required investment. It is therefore incapable of distinguishing between those smelters that are able to afford compliance and those that cannot. Indeed, for the reasons discussed above, the Replacement Test would almost inevitably demonstrate an inability to afford the required investment, irrespective of the smelter's actual physical condition, the size of the

¹⁶ The comments also discuss problems of foreign competition and the levels of sales and mining activity as factors in congressional intent, but do not suggest any specific deficiencies in the Net Income Test related to these factors, apart from the asserted need to focus on industry profitability.

¹⁷ These proceeds of liquidation can be referred to as the "capital base" against which the adequacy of the projected future returns from making the investment and continuing operations at the smelter can be measured.

investment actually needed to achieve compliance, or the actual or projected returns to investors.¹⁸

The use of liquidation (salvage) value in the net present value analysis, by contrast, suffers none of these drawbacks. It clearly indicates a smelter's ability to support a required investment. By explicitly recognizing the liquidation value of the smelter's assets as well as the value of future operations, the Net Income Test is able to value realistically each of the smelter's actual options and assess the actual financial consequences of a required investment. For these reasons alone, the Replacement Test cannot reasonably be viewed as a serious option for an eligibility test.

(2) The Replacement Test Distorts the Evaluation of Economic Feasibility by Ignoring the Required Nature of the Investment.

The Replacement Test is also unsuitable as an eligibility test because it inherently distorts the evaluation of economic feasibility by ignoring the basic characteristic of the pollution control investment: its required, involuntary nature. It is of central relevance in formulating a test of the economic feasibility of requiring pollution control that the investment would be made not because it is economically attractive to do so, but because it is required by law. If pollution control equipment were financially productive from the firm's viewpoint, it presumably would long since have been installed and the Clean Air Act might not be needed.

In evaluating the consequences of requiring that investment, therefore, it is necessary to recognize that only two options would be available to a smelter operator faced with the requirement: to make the investment required for compliance and continue operating, or to liquidate its investment in the facility and invest the money elsewhere at a higher rate of return. This contrasts to the situation where it is desirable to install new production equipment, where the options to be examined for maximizing return include continued operation without the new equipment. An eligibility test for section 119 must recognize this basic difference and must examine the consequences of a

requirement that the control equipment be installed.

The Replacement Test, instead, asks in effect whether in the absence of any technical or legal impetus for doing so, it would make financial sense to invest in pollution control equipment at the existing smelter. This is because pollution control investment: Its required, involuntary nature. It is of central relevance in formulating a test of the economic feasibility of requiring pollution control that the investment would be made not because it is economically attractive to do so, but because it is required by law. Obviously, if pollution control equipment were financially productive from the firm's viewpoint, it would long since have been installed and the Clean Air Act might not be needed.

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The Replacement Test, instead, asks in effect whether in the absence of any technical or legal impetus for doing so, it would make financial sense to invest in pollution control equipment at the existing smelter. This is because the Replacement Test conditions investment in pollution control on whether such investment will not detract from the facility's "value" as an ongoing entity, as represented by its replacement value (defined as the current cost of creating equivalent production capacity). This means that only if pollution control investment would yield at least as much as the company's other productive investment opportunities, and would return at least as much as required to secure financing from investors, would the existing smelter be presumed able to afford pollution control investment.

In conditioning the requirement to install nonproductive control equipment on a finding that it will earn as much return as production equipment, however, the Replacement Test implicitly assumes that the smelter operator has the option of making the

investment decision on purely financial grounds, free of any legal obligation to control the smelter's emissions. This ignores the mandatory nature of the investment, and fundamentally distorts the nature of the evaluation to be made under section 119: Whether the smelter is capable of supporting a required investment. The Replacement Test therefore asks the wrong question for evaluating the consequences of requiring the investment to be made. By asking the wrong question, the Replacement Test also biases the evaluation of feasibility; since the pollution control investment, by its largely non-productive nature, will generally lower the value of the facility as an ongoing entity, the Replacement Test will therefore indicate that no investment in pollution control is feasible.

(3) The Replacement Test Distorts the Evaluation of Economic Feasibility by Focusing on an Illusory Opportunity.

The Replacement Test further distorts the evaluation of economic feasibility by focusing on an illusory opportunity. Given the assumed goal of maximizing shareholder wealth, a smelter operator facing a pollution control investment requirement must choose, from among the opportunities facing it, that option which would most benefit shareholder wealth. These options are, conceptually: (1) Installing the required equipment and continue operating; or (2) liquidating the investment in the smelter and investing the money elsewhere (which may include selling the smelter to a new operator).¹⁹

Realizing the replacement value of the smelter (as defined by the SEC), however, is not an option available to the smelter operator; replacement value is an artificial measure of value, not an economic measure of value. No one would offer that amount for the right to operate the smelter. As the Asarco/Magma comments note, the most a third party would offer for the smelter would be the net present value of the smelter's future cash flows, taking account of pollution control costs.

By focusing on an illusory opportunity, the Replacement Test thus further distorts the evaluation of economic feasibility. The Net Income Test, by contrast, focuses on the actual opportunities facing the smelter, and provides a better measure of eligibility.

(4) The Replacement Test Implicitly Reverses the Basic Social and Economic Policy of the Clean Air Act.

Finally, the Asarco/Magma comments urge that replacement value to be used in

¹⁸ Replacement value need not be used in the net present value analysis to account for inflation and the need to periodically replace or modernize equipment. The Net Income Test accounts for both: Inflation is taken into account by indexing future costs in calculating the net present value of future cash flows; the need to replace equipment is accounted for by the allowance for sustaining capital expenditures in that calculation.

¹⁹ More detail on this point is provided in the Supplemental Response to Comments document in the docket.

the net present value analysis because liquidation value does not provide an adequate rate of return to the debt and equity capital invested in the smelter. This comment, however, is based on an erroneous view of the purpose of section 119. The purpose of an NSO is to defer compliance with SIP emission limitations if it is not economically feasible for the smelter to install the necessary controls now. Sources other than smelters, by contrast, must install the controls necessary to comply with SIP emission limitations, even if that investment would cause a source to close.

The Asarco/Magma comments urge that EPA attribute to Congress an unspoken intent to alter retroactively the position of investors in smelters, making them unique among investors in the American economy. Under the Replacement Test, no smelter would be found able to afford the investment for new controls until all prior investors in the smelter had been paid the return on their investments that they had hoped for.²⁰ This fundamentally reverses the actual investment decision that has faced investors in smelters since 1970, and still faces investors in every other American industry. The actual situation they faced, and others still face, is that as a result of the Clean Air Act, compliance expenditures had a prior claim on a facility's earnings. Thus, the prices and terms on which the investments were made (*i.e.*, the cost of capital) reflected prospective compliance requirements, and represented judgments about the amount of the earnings that would remain after those expenditures. These investors took a deliberate risk, and had no assurance that smelter earnings would be as great as they had hoped. To say now that, even though the smelter can make the control expenditure and keep operating, the available funds should be used first to guarantee the profits of prior investors, would be wholly inconsistent not only with the way capital markets operate and the position of all other investors, but also with the bases on which those investors

themselves acted in making the investments.

The general requirement to comply with SIP emission limitations has existed since the 1970 Clean Air Act became law. Debt and Equity investments in industrial facilities since then have had to take these compliance requirements into account. Since investors have known of these requirements, their judgments about the likely return on and risk associated with these investments have necessarily reflected the prospect of required compliance. They have known, in other words, that the compliance requirements of the Clean Air Act were a cost of doing business, and that the return on their investments depended on a facility's ability to cover more than this and other legitimate business costs. This, of course, is simply how capital markets operate.

Some investments have proven to be unwise, and have not—whether because of various regulatory requirements, bad management, market forces, or other factors—earned the expected rate of return. In some cases, the investments themselves have been only partly repaid, such as when a facility closes or a firm is reorganized in bankruptcy. These risks are part of the normal operation of the business and financial community, and are reflected in the interest rates on loans and the prices of stocks and bonds. These pricing mechanisms reflect investor judgments about the comparative prospects of the various firms and industries, taking into account all known factors which may affect those prospects. Indeed, it is the basic purpose of the securities laws to ensure public knowledge of all the factors which would be relevant to making appropriate pricing and investment decisions.

The existence of these risks does not affect the long-term viability of an industry unless they are so great that no investors can be found that are willing to operate and modernize existing facilities and build new ones, under whatever circumstances may exist in that industry. As to existing facilities, accepted principles of financial analysis demonstrate that there will be investors willing to make the required expenditures and continue operating the facilities if their net present value under an opportunity cost (closure) test is positive. Imposition of the requirement will therefore not threaten the continued operation of the facility, although it may prevent previous investors from realizing the gains on their investments for which they had hoped. This prospect, however, was one of which they were

aware in making their investment, and was reflected in the price or terms on which it was made.²¹

The most fundamental policy of the Clean Air Act is that public health expenditures be internalized as costs of doing business and have a prior claim on a facility's earnings. The Administrator does not believe that Congress intended a radical change in that policy for smelters. The use of the Replacement Test would make such a radical change, yet would do no more than the Net Income Test to assure the continued operation of American smelters. Adoption of the Replacement Test would therefore go far beyond the discretion provided the Administrator to take the costs of compliance into account, and must be rejected.

4. Is EPA's test too burdensome?

Several companies commented that Appendix A to the regulations required a burdensome amount of information for purposes of performing the eligibility test. In light of these comments, the Administrator has, where possible, reduced the required information.

The Administrator's basic approach to validating the financial analyses and data is to require applicants to disaggregate data to levels that can be either independently certified or assessed. For example, the cash proceeds from liquidation are to be independently estimated for major components (*e.g.*, land) according to a standard format and certified. Likewise, major cost components are to be identified and cost component totals are to be further broken into puts and their prices. For example, energy costs are to be identified and the average price of each major fuel and its consumption must be reported. Data must be disaggregated this way because detection of errors in highly aggregated data is nearly impossible. These errors could otherwise result in massive distortions in the final results of the analyses.

Based on the public comments, however, the Administrator has substantially reduced the data submission requirements. The consolidated accounts table which Phelps Dodge argued would be extraordinary expensive to prepare has been eliminated. All tables that refer to "baseline" financial performance (*i.e.*,

²⁰ Because the test uses the cost of a new, controlled facility, it would actually reserve considerably more of the smelter's earnings for prior investors than they actually expected to earn. It should also be noted that the concept of "profitability" itself, in terms of the relevant capital base, is very different for evaluating whether a new smelter will be built from evaluating the effects of requiring additional controls on an existing smelter. For a new smelter, profitability is value of its future cash flow (taking the cost of capital into account) is positive, the Net Income Test does turn on the "profitability" of the new investment to the same extent that EPA's NSPS analysis turns on the profitability of new source construction.

²¹ Evaluating whether investors will finance new facilities requires the use of a different capital base than that used for evaluating compliance costs. This would be more along the lines suggested by Asarco/Magma consultants Citibank and Scott. However, section 119 and its eligibility test apply only to existing smelters, and to the extent that their comments address the effects of a particular eligibility test on new smelter construction, they are irrelevant.

without further emission controls) have been eliminated because, after careful reexamination, the Administrator believes that the burden of preparing these tables outweighs their contribution to validating the analyses.

The Administrator believes, however, that the remaining data requirements are necessary for reaching accurate results and for ensuring the integrity of the process. This view is based on the Agency's experience with analyses of smelters under the existing smelter policy. In performing those tests, EPA found that the quality of the production cost and revenue information used was inadequate for reaching accurate results, primarily because it was neither obtained directly from the companies' books nor presented in a way that allowed the smelter to be viewed in terms of its real economic worth to the company.²² The Agency has therefore concluded that information of the kind found in Appendix A as promulgated—detailed company data presented on a uniform "stand alone" basis for all smelters—is necessary. The Administrator did decide to require applicants to provide more detail in the projected data. This detail allows direct comparison of the historical and forecast²³ data and facilitates independent analysis.

The Administrator recognizes that the remaining burden on the companies, though reduced, is still not trivial. This burden, however, is also not undue. The granting of an NSO is an air quality management decision of great significance, given the amount of additional sulfur dioxide a smelter will be permitted to emit. In addition, an NSO may permit the deferral of expenditures of up to hundreds of millions of dollars. Finally, the companies themselves are among the largest and most sophisticated in the nation, conducting business in many parts of the world. Judged in this

context, the magnitude of the burden is reasonable.

B. The Designation of Certain FGD (Scrubbing) Systems as Adequately Demonstrated Technology

EPA's proposed rules would have designated as adequately demonstrated technology, for purposes of evaluating eligibility for an NSO, the following systems: (a) The acid plant and associated process technology underlying EPA's new source performance standards for copper, lead, and zinc smelters (40 CFR Part 60, Subparts P, Q, and R); and (b) magnesium oxide sulfur dioxide concentration, lime/limestone scrubbing, and Cominco ammonia scrubbing. EPA also stated that it was considering designating the Flakt-Boliden sodium citrate concentration system as adequately demonstrated.

Comments were received in two areas. First, certain commenters argued that it was improper under section 119(b)(3) for EPA to consider any technological questions on an industry-wide basis without considering economic factors at the same time, or that some additional proceeding was required by section 119(d)(4). Second, various comments questioned the technical basis for considering these systems adequately demonstrated.

1. *Is it proper for EPA to make a finding as to technological feasibility in this rulemaking?* The main thrust of the comments in this area was that it was somehow improper for EPA to "bifurcate" the technical from the economic aspects of eligibility determinations under section 119(b)(3). This contention is based on a misunderstanding of EPA's action and the intent of that section.

As discussed in detail above, the intent of section 119 is to adopt the main elements of EPA's existing smelter policy. This includes the conditions under which a smelter may use SCS to meet NAAQS and defer compliance with its SIP emission limitations. Thus under section 119(b)(3), as under the existing policy, EPA must determine whether it is economically and technically feasible for a particular smelter to meet those SIP requirements. This determination involves three findings: (1) Whether there is technology in existence which has been adequately demonstrated for the purpose; (2) whether that technology can be applied at the smelter in question; and (3) whether it is economically feasible for the smelter to install and operate it. A smelter would be eligible for an NSO if any of those questions were answered in the negative.

Section 119(b)(3) specifies that the overall eligibility decision is to be smelter-specific. It does not, however, indicate how the decision is to be made, but rather leaves that to the Administrator's discretion. In proposing to designate certain systems as adequately demonstrated, the Administrator was simply exercising that discretion to inform interested members of the public that he regards those systems as technically proven to the extent necessary to base eligibility decisions on their possible use. This kind of finding is inherently industrywide, since the finding is based on the systems' use at sources other than the NSO applicant. The comments do not offer any reason why this is improper, and the Administrator knows of none.²³

The comments argue, however, that this does not take costs or site-specific factors into account as required by section 119(b)(3). This comment misunderstands the Agency's action. Inherent in the finding that a system is adequately demonstrated is the fact that the cost of the system is within the range that some smelter was able to afford. This is because the finding is based on its actual use at an existing smelter. Beyond this, however, section 119(b)(3) requires consideration of the economic feasibility of the system for the applicant smelter itself (unless the Administrator makes a finding that it is reasonably available to all smelters, as he did for acid plants under the existing EPA policy). The NSO rules do not, therefore, ignore the costs of these systems, but rather evaluate whether a particular system is economically feasible for the applicant smelter. Since this determination is inherently smelter-specific, and since it cannot be made without knowing which systems to evaluate, it is impossible not to "bifurcate" the technical and economic decisions.

Site-specific technical as well as economic factors are also considered under the final rules. Under § 57.102(b)(3), a smelter operator may show that even an adequately demonstrated system which it can afford is not "applicable" to the smelter because its use would be technically unreasonable for reasons specific to that site. Thus the eligibility determination includes each of the elements that Congress specified, and the

²² See, 123 Cong. Rec. S13700, Col. 2 (August 4, 1977) (daily ed.) (Statement of Senator Muskie).

²³ In proposing these rules, EPA indicated that it would provide projected indices (forecasts) of various relevant economic factors for use in performing the analyses required by Appendix A. Although a portion of this information was placed in the docket either before or shortly after proposal, the balance of the indices did not become available, and consequently were not placed in the docket, until shortly before the promulgation of these rules. See, section 307(d)(4)(B)(i) of the Act. These are the indices identified in paragraphs 2.4 (d), (e), and (g) of the Instructions portion of Appendix A as promulgated today. Because this provided only a brief opportunity for comment before promulgation of these rules, the Administrator will consider any objection to this material submitted in a petition for reconsideration within sixty days of today to be based on grounds "arising after the period for public comment" within the meaning of section 307(d)(7)(B) of the Act.

²³ The proposal gave specific and adequate notice of the Administrator's intent to designate those systems as adequately demonstrated for eligibility purposes. See 44 FR at 6287-6288, 6296, and 6317-6318. Indeed, the specific comments received on these proposed designations belie any contention that the notice was deficient.

Administrator finds nothing in the comments to suggest that his exercise of discretion to make the inherently non-site-specific determination of general technical feasibility in this rulemaking is improper.

Concern was also expressed that making this finding somehow required further proceedings under section 119(d)(4), or that making the finding in this rulemaking is inconsistent with that provision. This contention also reflects misunderstanding of the statutory provision and the Agency's action. Section 119(d)(4) is in no way relevant to eligibility for an NSO, but rather governs the nature of the interim controls that may be required in an NSO once granted. The Administrator recognizes that a further proceeding would be necessary to require weak gas stream controls as interim controls in an NSO, and does not intend this rulemaking to pre-empt such a further proceeding on the economic feasibility or site-specific applicability of such interim controls under section 119(d)(4). The only effect of this rulemaking is to establish that the designated systems are technically feasible (adequately demonstrated) in an industrywide sense, not that they are applicable or reasonably available to any or all smelters.

2. *Are these systems adequately demonstrated?* Comments in this area focused exclusively on the scrubbing and concentration systems. After careful consideration of these comments, EPA is today finalizing its proposed determination that certain of this technology is adequately demonstrated.

In its proposal, EPA also said it was considering designating the Flakt-Boliden sodium citrate concentration system as adequately demonstrated. EPA is not finalizing this proposed determination, pending the results of further experience with this promising technology, which should be available shortly.

(a) *Background.* The major pyrometallurgical steps for copper, lead, and zinc generate great quantities of sulfur dioxide (SO_2), some of which is emitted in gas streams too dilute for the practical use of acid plants for treatment. One means for removing SO_2 from these gas streams is flue gas desulfurization (FGD). In an FGD process, the gas stream is mixed in a vessel with a substance that combines with the SO_2 in the gas. The clean ("scrubbed") gas is discharged from the vessel, and the collected SO_2 is retained with the reacting substance for subsequent treatment or disposal. Regenerative FGD systems produce SO_2 as a more concentrated gas which can

then be made into liquid SO_2 , sulfuric acid, or sulfur which can be sold or used. Nonregenerative FGD systems essentially neutralize the SO_2 as a waste solid or sludge, which then must be disposed.

The Administrator's judgments regarding the scrubbing and concentration systems listed here are primarily based on their actual use at copper, lead, and zinc smelters. In addition, EPA has applied its experience with FGD systems used to control offgases from utility boilers. This transfer of technology experience is proper, studies show, provided there is some adjustment in operating conditions.

Lime/limestone processes have been extensively used in Japan (since 1971, in some cases) to treat offgas from lead, zinc and copper smelters. Lime/limestone scrubbing operations examined by EPA engineers include the Onahama Smelting and Refining Company (reverberatory furnace offgas), Mitsubishi Naoshima Lead-Copper Smelters (blast furnace and weak stream sinter machine offgas), Hosokura Lead-Zinc Smelter (blast furnace offgas and lead smelter acid plant tailgas), and the Toho Zinc Chirigirishima Lead Smelter (lead smelter, acid plant tailgas, sinter machine weak gas and blast furnace offgas). In addition, numerous other lead and zinc smelters use lime/limestone scrubbers for various offgas processes. This technology is also currently in operation for many utility offgas streams. In fact, lime/limestone systems account for over 90 percent of scrubbers operating on utilities. Based on extensive operating experience in this industry, it has been determined that these systems can operate at 90 percent SO_2 removal or greater with at least 90 percent operability.

Similarly, the magnesium oxide SO_2 concentration system (MgO system) has been satisfactorily operated for two years on reverberatory offgas at the Onahama Smelter. In the United States, the MgO system has been under commercial scale evaluation since 1972. In 1975, after much analysis, EPA concluded that the MgO system was currently available for power plants. 40 FR 42045, 42049 (September 10, 1979). The concentrated stream produced by the MgO system retains product flexibility since it can be used to make liquid SO_2 , sulfuric acid, or elemental sulfur. It can provide over 98 percent control for a reverberatory furnace.

Finally, the Cominco ammonia system, which produces ammonium sulfate as well as concentrated SO_2 offgas, has been successfully used for weak stream SO_2 control. The Cominco,

Trail, B.C. lead/zinc smelter facility operates three ammonia-based FGD systems to remove SO_2 from the lead plant sinter machine offgas, zinc plant roaster offgas and zinc plant acid plant tailgas. Reliability and minimal downtime for maintenance characterize the FGD facilities at Cominco. Ammonia scrubbing has also been used to treat sulfuric acid plant tail gas at various locations in the United States.

(b) *General Comments.* General comments questioned whether the scrubbing systems were applicable to smelters in the Southwest because the technology has been applied only at plants located close to waterways providing unlimited amounts of water for scrubbing and cooling. EPA studies show, however, that access to large amounts of water is not a special requirement for these systems and should not impede application of this technology to smelters in the Southwest.

Since the Onahama and Cominco smelters have access to a large water supply, no attempt was made to conserve water usage, and therefore the water use figures for these smelters do not reflect the savings that can result when water conservation is a design objective. Such conservation is illustrated by a molybdenum roaster in Arizona which is currently operating a lime slurry SO_2 control system using a continuous 4 percent bleed to a tailings pond where 50 to 80 percent of the water is recovered for reuse. Generally speaking, a new scrubbing system would, as a maximum, increase water usage for a smelter only from 10 to 20 percent. Analysis reveals this increase would not be prohibitive for smelters, just as it has not been prohibitive for power plants in these areas.

The Administrator has already determined (44 FR 33594, June 11, 1979) that, for power plants, an FGD system uses less than 10 percent of the water consumed (Electric Utility Steam Generating Units: Background Information for Proposed SO_2 Standard, EPA-450/2-78-007a) and that it will not be a controlling factor in the siting of new utility plants. Indeed, there has been extensive use of the lime/limestone system and to a lesser extent the MgO system at utility power plants throughout the United States and the world in areas where large amounts of water are unavailable.

Moreover, a 1976 report on the application of absorption-based SO_2 control systems to certain United States primarily copper smelters (SO_2 Control Processes for Nonferrous Smelters, EPA-600/2-76-008) indicates that most of the copper smelters, including those in the Southwest, have adequate water

supplies available. Thus an FGD system's rate of water consumption is not apt to be a factor limiting its application to smelters, even those in the Southwest.

(c). *Comments on Lime/Limestone Scrubbing.* One commenter suggested there might be scale-up problems with lime/limestone scrubbing because the Japanese systems are "small." The Onahama smelter in Japan, however, is currently operating a full-scale lime/limestone system that is actually handling over 70,000 scfm of gas at an SO₂ concentration of 2 to 2.5 percent. These reverberatory furnaces are full-scale systems. With sufficient sealing of ductwork and equipment in domestic smelters, offgases from a copper smelter reverberatory furnace could be reduced to 70,000 scfm. Thus, there would be no need to scale-up the Onahama system; it could be applied directly. If the SO₂ concentration is lower, as would occur with a calcine charge furnace, it would actually be easier to implement a design because less SO₂ would be absorbed. Lime/limestone systems are, of course, commercially available for full-scale commercial operation on coal-fired utility boilers.

Another commenter suggested that the lime/limestone system might be infeasible because the high degree of process control necessary to prevent scaling and plugging is not often possible under the fluctuating conditions normally encountered in reverberatory smelting. EPA has determined, however, that techniques applicable to reverberatory smelting have been devised and used successfully in recent years that effectively solve both the scaling and the plugging problems.

The tendency of both calcium sulfite and calcium sulfate to form scale in the absorber, mist eliminator, and ancillary tanks, pumps, and pipes has been an operating problem of the lime/limestone system. The Japanese, however, have experienced and solved scaling problems with their lime/limestone system. Between 1968 and 1972 the Hiroshima Technical Institute conducted a \$5,000,000 program to investigate the scaling problem occurring on the scrubber and mist eliminator of the lime/limestone pilot plant.

Results showed that the unsaturated sulfite scale was easy to remove, but the sulfate was very difficult. Preparation and operating conditions of the absorbent were found to be critical and required the proper range of pH, temperature, concentration, construction material of the scrubber, liquid to gas ratio (L/G), and prevention of mist carryover through the eliminator. Most of this work was reported in 1971,

including the development of the seed crystal technique.

The seed crystal technique provides a sacrificial surface for crystal precipitation greatly reducing and controlling deposition on absorber surfaces. It has been found that scaling or crystallization of the calcium sulfate occurs as either many small crystals, as a layer on the surface of equipment, or as layered buildup on seed crystals. If the formation of the calcium sulfate can be controlled to a rate below the rate of crystallization on the seed crystals, then the scaling will preferentially go to these seed crystals. However, if the calcium sulfate rate of formation exceeds the rate of crystallization on the seed crystals or if there are not sufficient seed crystals present, then scaling will occur on the surface of the equipment or many small additional crystals will be formed. Thus, for a given solubility of calcium sulfate, the concentration of calcium sulfate in the liquid phase must be maintained. This can be done by controlling either the L/G in the absorber or the flow rate of the seed crystals to the absorption circuit. The lower the SO₂ concentration, the less scaling that will occur.

The design of the internal conditions of the system is critical because of the scaling problem and the fluctuation of the SO₂ concentration. There has not been any problem with operation of the gypsum system within the range of fluctuations occurring at the Onahama smelter. However, detailed design considerations must be optimum to provide a flexible system. Selecting optimum slurry velocities in the piping and proper instrumentation are critical.

Design and operation of the absorption towers at Onahama have also reduced scaling formation. Two plastic grid packed absorbers in series are used. Their external shell is made of steel plates lined with synthetic resin. The grid packing has large openings to minimize plugging and pressure drop.

The design of the absorber and operating L/G are critical to minimize scaling. It is important to obtain an internal configuration producing an operating condition that prevents the slurry from stagnating and ensuring that all the inner surfaces of the absorber are sufficiently sprayed or covered with the absorbing solution. This covering will avoid any pH variation which could occur locally and thereby provide a condition for scale generation.

These and other process techniques are summarized in Flue Gas Desulfurization at the Bunker Hill Company, Kellogg, Idaho (EPA-330/2-79-011), Feasibility of Primary Copper Smelter Weak Sulfur Dioxide Steam

Control (EPA-68-03-2398), and Electric Utility Steam Generating Units: Background Information for Proposed SO₂ Emission Standards (EPA-450/2-78-700a), all of which are in the docket.

Plugging caused by deposition of solids on equipment surfaces has sometimes restricted the passage of liquids or gas in limestone systems, but this problem, like scaling, has largely been solved in recent years as limestone scrubbing has undergone intense development in the utility industry. Maintenance of proper liquid velocities and elimination of areas where solids can settle has minimized plugging, as has careful control of raw material particle size, screening of the slurry, and reduction of the overall amount of solids.

A number of comments concerned problems relating to disposal of the solid waste generated by the lime/limestone system. Specifically, Phelps Dodge Corporation questioned whether sufficient space existed to dispose of waste at its Ajo, Douglas and Morenci smelters. ASARCO voiced similar concern about its smelters at El Paso, Hayden, and Tacoma. EPA acknowledges that the lime/limestone system may be inapplicable in a few cases due to site-specific constraints on disposal options. On the basis of extensive use, demonstration programs, research, and development, however, EPA has determined that problems of solid waste disposal from lime/limestone FGD systems can in most cases be solved.

In 1975, EPA announced its decision that sludge produced by lime/limestone systems at power plants can be fixated and disposed of in an environmentally acceptable manner at reasonable cost. 40 FR 42045 (September 10, 1975). See, also, 42 FR 61541 (December 5, 1977). This decision was in response to a remand ordered by the court in *Essex Chemical Corporation, et al. v. Ruckelshaus*, 486 F.2d 427 (D.C. Cir. 1973), and followed an extensive reevaluation of sludge disposal that included national hearings, an agency panel report, and two independent contractor studies.

A number of reports in this docket also discuss the disposal of by-products from non-regenerable FGD systems, among them are: Economics of Disposal of Lime/Limestone Scrubbing Wastes: Untreated and Chemically Treated Wastes (EPA-600/7-78-023a), Control of Waste and Water Pollution from Coal-fired Power Plants: Second R & D Report (EPA-600/7-78-224), and Disposal of By-products from Nonregenerable Flue Gas Desulfurization Systems: Final Report (EPA-600/7-79-046). Other reports in

the docket also discuss disposal of wastes from lime/limestone systems. These reports show that disposal options include conversion of the sludge to gypsum (which can be sold or disposed on or off the site), ponding in indigenous clay soil, ponding with a flexible liner or liner of impervious soil, ponding with underdrainage, surface or deep mine disposal, ocean disposal, and chemical treatment with landfilling. In addition, processes now available transform mixtures of lime or limestone sludge, fly ash, additives, and aggregates into high strength road base usable in primary highways, airport runways, trucking terminals, etc. Other possible sludge applications include synthetic aggregate suitable for producing sintered structural shapes and asphaltic concrete, mineral wool, soil amendment, mineral recovery, sulfur extraction, and polluted water treatment.

Most smelters, it has been determined, have space readily available for disposal of the solid waste product. For the Phelps Dodge smelters, the acres per year required for disposal (liberally calculated) would be 18.5 at Morenci, 13 at Douglas, and 5.5 at Ajo. Morenci has a tailings pond that covers nearly 2,560 acres plus available wasteland. Douglas also has wasteland available. Ajo has a tailings pond of approximately 1,920 acres, a waste dump of over 640 acres, and 640 acres of additional wasteland. Consequently, in none of these areas would waste disposal appear to be a problem. As for ASARCO, Hayden has a sufficient space for waste disposal with a tailings pond of over 640 acres and an additional area with available wasteland. The Tacoma and El Paso smelters may have less room for disposal. In any case, a source owner or operator has the opportunity to demonstrate that the lime/limestone system is inapplicable because site specific reasons make its use technically unreasonable.

As noted, lime/limestone systems can produce gypsum for sale or easy disposal off- or on-site. The Onahama smelter converts waste sludge to gypsum for sale to wallboard manufacturers. In fact, in 1978 the lime/limestone process producing usable gypsum was used in Japan more than any other FGD system. At the beginning of 1978 over 500 major FGD plants having a combined capacity of 90,000,000 m³/hr. were operational in Japan. Nearly 50 percent of this plant capacity used the lime/limestone process producing usable gypsum.

One commenter opined that gypsum produced by domestic smelters would

not be marketable because, unlike Japan, this country has large deposits of relatively high-grade gypsum. Recent studies show, however, that the cost of salable gypsum produced by lime/limestone systems can be competitive with domestically mined crude gypsum if appropriate cost avoidance credits are taken for chemical treatment and disposal. Moreover, waste converted to gypsum can be disposed of easily.

This country imported 7.7 million tons of gypsum in 1972 and the anticipated figure for 1979 is 8.3 million tons. These imports, which occur even though large, mineable quantities exist in New York, Michigan, Iowa, and Texas, come primarily from Nova Scotia, Canada, and go primarily to wallboard manufacturers, especially in the East. Gypsum has also been used in agriculture as a soil additive, as a retarder in cement, and as a paint pigment.

Experience in Japan and elsewhere indicates that gypsum crystal size used in a lime/limestone system can be controlled to produce stronger and lighter weight wallboard than mined gypsum. The potential for producing a superior product, plus the large imports, show the high potential for sales of gypsum. Smelter-produced gypsum would compete directly with natively mined gypsum, especially in the West where it is mined in several states. The sale price of gypsum mined in the West and its shipping cost would dictate the price at which smelter-produced gypsum could successfully compete in the market.

A number of EPA-sponsored studies have examined the estimated costs of producing wallboard-grade gypsum from lime/limestone systems. They conclude that the cost of salable gypsum produced by these systems can be competitive with domestically mined crude gypsum if appropriate cost avoidance credits are taken for chemical treatment and disposal. For example, one such report entitled *Control of Waste and Water Pollution from Coal-fired Power Plants: Second R & D Report* (EPA-600/7-78-224) estimated engineering costs considering two basic processes: A tail-end system incorporating an oxidation tower, which approximates the Japanese processes, and an integrated system, which represents the pilot plant installation at Research Triangle Park, North Carolina, and is being tested at the TVA Shawnee plant with its 10-MWe venturi and spray tower scrubber. The estimates illustrate the range of costs for salable-grade gypsum produced from SO₂ abatement processes.

The study concluded that the potential selling cost of gypsum produced in the integrated systems results in generally favorable economic trends relative to chemical and disposal costs of dry wastes. Also, significant cost reductions can be achieved by improving limestone utilization from 65 to 100 percent. For tail-end systems operating with 100 percent limestone utilization, gypsum production for sale is marginally competitive.

Gypsum also has advantages in terms of disposal. Gypsum is suitable for landfill because, when it is discharged in a slurry form to a waste pond, it precipitates relatively easily in small volumes, thus reducing the required pond size. In the case of truck transportation, gypsum can be handled with great ease.

One commenter suggested that this difficulty in removing water from (dewatering) sulfite crystals makes the lime/limestone system infeasible. However, dewatering sulfate crystals is much easier and, as noted, so is the dewatering of gypsum effluent, which is considered current state-of-the-art.

A final comment on solid waste disposal claimed that Japanese success in solving this problem should be discounted because it was contingent on disposal of wastes directly to the ocean. Consultants hired by EPA who scrutinized the Japanese smelters were, however, unable to discover a single instance where solid waste was disposed of directly to the ocean. Instead, wastewater systems in Japan, including the one at the Onahama smelter, were specifically treated to remove impurities before the water was returned to the ocean.

Thus, on the basis of its extensive and successful use, both domestically and abroad, the Administrator determines that lime/limestone scrubbing is adequately demonstrated technology. Full-scale use of lime/limestone scrubbing has led to the identification and solution of problems such as scaling, plugging, and sludge disposal.

(c) *Comments on Magnesium Oxide Sulfur Dioxide Concentration.* The MgO system is a wet scrubbing regenerable process that differs from the lime/limestone process in two basic ways: the magnesium sulfite produced when SO₂ is absorbed from the flue gas can be calcined to recover the SO₂ in concentrated form, and during calcining the magnesium oxide (MgO) is regenerated and can be recycled. The process produces a marketable product with no sludge to dispose. It requires only a small chemical makeup.

ASARCO commented that Japanese success with the MgO systems is

inapposite for U.S. smelters because (1) the MgO used at the Onahama was (inexpensively) recovered from seawater and produced in a nearby plant, (2) the magnesium would have to be replaced more frequently at domestic smelters, and (3) waste materials from Onahama were sluiced directly to the ocean, which is not possible in this country.

As explained above, cost is peripheral to whether a technology is adequately demonstrated; thus, what matters is not whether magnesium is more expensive in the United States, but whether it is available here. The record shows that it is available. Furthermore, there is no reason why domestic smelters would need more replacement magnesium than at Onahama. In fact, the MgO system at the Boston Edison Mystic Station lost only 0.10 lb MgO/lb SO₂. As for disposal, neither the companies' comments nor EPA's information establish that waste from the Onahama MgO system was dumped directly in the ocean. In any event, only a small quantity of MgO is generated for disposal and it is highly unlikely that any smelter could not find a dump area large enough to last many years. Phelps Dodge opined that the MgO system would be infeasible in the Southwest because it is energy intensive and wastes water. Studies show, however, that although energy and water consumption may be major costs of the MgO system, they do not make the system infeasible.

In addition to its use at the Onahama smelter in Japan, the MgO system has been used in three full size electric utility installations in the United States—the Mystic Station of Boston Edison, the Dickerson Station of Potomac Electric Power, and the Eddystone Station of Philadelphia Electric. A commenter noted that the Mystic and Dickerson Stations have shut down and the Eddystone Station has experienced reduced operability. The commenter asks whether problems with the MgO system are the cause.

Both the oil-fired MgO system at Mystic and the coal-fired one at Dickerson were prototype units built to demonstrate that the MgO system was technically feasible and to determine major areas for improvement. Each achieved these purposes.

The Mystic Station, for example, logged 4000 hours of running time during its operations (it was shut down in June 1974 at the completion of the contract) and demonstrated that it could meet the process guarantees of 90 percent removal of the inlet SO₂, that the magnesia could be regenerated and recycled, and that 98 percent sulfuric

acid of good quality could be recovered from the SO₂ removed from the flue gas. No plugging or scaling occurred. Equipment problems and malfunctions were frequent during the test period, especially in the dryer and calciner systems, but they were corrected before completion of the program. The unit worked best during its last 4 months when operability (hours of FGD operation divided by hours of boiler operation) was about 80 percent and would have been higher but for a two-week outage of the offsite sulfuric acid plant. From April 12 to May 10, 1974, the system achieved 100 percent operability.

The Onahama smelter MgO system, which operated for over 2 years is not currently used. The reason is that the sulfuric acid market in Japan is not as good as the gypsum market, and the lime/limestone system is therefore used instead. There has been no evidence that the MgO system had low availability.

The Eddystone facility, which is currently in operation using a MgO system, had to be temporarily shut down in January, 1976, because Olin Chemical closed the acid plant serving the MgO calciner. The regeneration equipment was moved to Essex Chemical, Newark, New Jersey. The Eddystone FGD system operated only a short time, but it removed more than 90 percent of the SO₂. Although initial operability was low, the main problems were with ancillary equipment; the major equipment (scrubbers and absorber, etc.) worked properly.

Philadelphia Electric's confidence in its MgO system is shown by its current construction of a second unit at Eddystone. The first unit was designed for 1,200,000 acfm at 300° F and an SO₂ concentration of 1400 ppm. The second is designed for 1,270,000 acfm under the same conditions. These two units were designed and built by United Engineers of Philadelphia, which is currently designing an MgO system of 2,200,000 acfm at 300° F and SO₂ concentration of 2500 ppm for the TVA Johnsville Station in Tennessee. Basic-Chemico has also designed and built MgO systems and currently offers this service to industry.

This domestic experience with the MgO system, as well as its use at the Onahama smelter, form the basis of the Administrator's decision that this technology is adequately demonstrated. The MgO system has been demonstrated to efficiently recover inlet SO₂ with regeneration of the MgO for recycling and recovery of the SO₂ for feed to a conventional smelter acid plant. Magnesium is available domestically, and although energy and water consumption may be major costs

of a MgO system in the Southwest, this does not undermine the Administrator's finding, which is based on an industry-wide examination of technical feasibility.

(d) *Comments on Cominco Ammonia Scrubbing System.* Removal of SO₂ from gas streams by ammonia-based scrubbing has been studied intermittently since the 1880's. Ammonia-based processes are not amenable to throw-away operation because of the cost of ammonia and the solubility and nitrogen value (with chemical oxygen demand) of ammonium salts. The Cominco ammonia scrubbing system can achieve high efficiencies of SO₂ removal over a wide range of SO₂ concentrations. Since the absorbent is a solution rather than a slurry, there are no scaling or plugging problems in the process.

One problem with ammonia scrubbing systems is that the carryover of ammonium salts and other compounds can cause a highly visible plume to occur when the scrubbed gas is discharged from the stacks. The plume is partly attributable to gas-phase reactions of ammonia, SO₂, and water forming ammonium sulfite, which, due to its small size, is not efficiently removed by a conventional mist eliminator. The Cominco smelter at Trail, B.C., solved the plume formation problem at the zinc plant by using a Brinks mist eliminator to filter stack gas prior to discharge. The Cominco smelter also reported adequate control of the plume when operating with low liquid temperature to reduce the ammonia and SO₂ losses, and pretreating the gas before the absorbers. In conjunction with Catalytic, Inc., the Cominco smelter has conducted pilot tests to study the plume formation problem further, and personnel now feel that they will largely eliminate this problem.

One commenter alleged that the Cominco ammonia system is infeasible because the ammonium sulfate product is highly soluble and cannot be properly stockpiled in areas that are subject to rainfall. Handling of ammonium sulfate in the fertilizer industry shows, however, that this material is safe and easily storeable. The Cominco lead and zinc smelter in western Canada and the New Brunswick lead smelter in eastern Canada both produce ammonium sulfate and successfully handle it under rigorous conditions (rain and snow).

Other comments questioned whether ammonia would be available given its dependence on natural gas. Studies show, however, that there will be an adequate supply of ammonia. Moreover, the scarcity or expense of natural gas would not preclude the availability of an

adequate supply since feedstocks other than natural gas could be used.

Most of the ammonia produced at present is based on steam reforming of natural gas. Although any hydrocarbon could be used, natural gas has the advantages of a high hydrogen to carbon ratio and a high purity as received at the plant. Other potential hydrogen feedstocks include petroleum fractions, such as naphtha and fuel oil, as well as coal.

A commercial process to produce hydrogen based on coal instead of natural gas or naphtha called the Bosch process has been known for over 50 years. It calls for passing steam over highly heated carbon (coal) in the presence of a suitable catalyst.

The Bosch process has not been used in recent years on a commercial level because the natural gas process has been less costly and more reliable. Should this change, the coal process could be used to produce hydrogen based on its previous commercial use. In anticipation of such a change, the Tennessee Valley Authority's National Fertilizer Center is currently working on an ammonia-from-coal project scheduled for startup in mid-1980.

At present, there is no shortage of ammonia in this country or throughout the world. In 1978, 59 domestic companies operated ammonia plants at 93 locations with a total operating design capacity of 22 million short tons a year. A recent EPA report, *Impact of Ammonia Utilization by NO_x Flue Gas Treatment Process* (EPA-600/7-79-011), concluded that normal growth of the ammonia market could accommodate even an assumed wide-spread use of an ammonia-intensive flue gas treatment system for the removal of nitrogen oxides from power plant stack gas.

Worldwide, ammonia is now in oversupply. A great deal of new ammonia capacity has come on stream, much of it in countries with plentiful supplies of low cost natural gas. For example, the Soviet Union increased its exports of ammonia to this country from zero in 1977 to 315,000 short tons in 1978; large imports of ammonia from the Soviet Union are expected to continue in future years.

Finally, it is noteworthy that the Cominco smelter manufactures its own ammonia, and has since 1940, by using nitrogen from liquid air distillation and hydrogen from electrolysis of water.

A final comment on the Cominco ammonia scrubbing system was whether Arizona smelters would have an adequate market for the ammonium sulfate generated. Although this comment is not strictly relevant to whether the system is adequately

demonstrated, it does appear that ammonium sulfate will likely prove marketable, the sale price being dependent on its nitrogen content.

There has been no difficulty in selling the ammonium sulfate produced at the Cominco smelter a Trail, B.C. It is currently sold to Cominco American Corp., Spokane, Washington, and Cominco Ltd., Calgary, Alberta, and is marketed as fertilizer in the northwest United States and various areas of Canada.

The value of ammonium sulfate as a fertilizer stems from the nitrogen it contains. Nitrogen is the primary fertilizer element required for all growing crops. On a per ton basis, it is true that ammonium sulfate contains less nitrogen (21 percent) than for example ammonium nitrate (34 percent) or urea (46 percent). Ammonium sulfate will continue to be used as a fertilizer, however, if the price (per unit of nitrogen) is set at a level that compares favorably with other fertilizers. Also, with the availability of sulfuric acid at smelters, ammonium phosphate fertilizer can be produced. This product can also be sold in the fertilizer market.

Thus the Administrator has determined that ammonia scrubbing is adequately demonstrated technology. It has been used successfully on reverberatory furnace offgases and at the Cominco, Trail, B.C., lead/zinc smelter. This technology can achieve high efficiencies of SO₂ removal with no scaling, plugging, or waste disposal problems. The visible plume problem has been solved, and adequate supplies of ammonia will be available irrespective of natural gas supplies.

(e) *Conclusion.* After considering their feasibility, energy, and nonair quality health and environmental effects, the Administrator is today designating as adequately demonstrated technology, for purposes of evaluating eligibility for an NSO, the following systems: (a) The acid plant and associated process technology underlying EPA's new source performance standards for copper, lead, and zinc smelters (40 CFR Part 60, Subparts P, Q, and R); and (b) magnesium oxide sulfur dioxide concentration, lime/limestone scrubbing, and ammonia scrubbing. Thus, eligibility determinations should consider their possible use.

These designations are based on analyses of the actual use of the several systems by smelters and power plants. The comments questioning the technical basis for designating these systems adequately demonstrated present no problems not identified and, for the most part, solved in the course of the systems' use.

C. Molybdenum Roasters

EPA specifically invited comment in its proposal on whether molybdenum roasters should be considered eligible for NSOs. Only one commenter, a corporation engaged in molybdenum roasting, responded to EPA's invitation. It argued that molybdenum roasting at older, smaller facilities confronts the same economic and technical problems in SO₂ control as found in the copper, lead and zinc industries. Therefore, the commenter concluded, Congress intended molybdenum smelting to be within the scope of section 119.

The legislative and administrative history, however, clearly points to the opposite conclusion, and, accordingly, the section 119 regulations promulgated today permit NSOs to be issued only to copper, lead, and zinc smelters. As discussed above, Section 119, which does not define "primary nonferrous smelter," was based on the existing EPA policy for smelters. This EPA policy never treated molybdenum roasters as nonferrous smelters. EPA's new source performance standards for primary nonferrous smelters did not include molybdenum roasters, either. Because the smelter-related EPA actions before Congress when it enacted section 119 did not include molybdenum roasters, and because molybdenum roasters had not been the subject of concern in formulating any of those actions, the Administrator has concluded that Congress did not contemplate their inclusion in section 119. This view is also supported by the fact that Congress repeatedly stressed that the relief provided by section 119 was exceptional and intended only for a unique category of sources. See, e.g., 123 Cong. Rec. S13699 (August 4, 1977) (daily ed.). This interpretation is further confirmed by Congress' itemization of only copper, lead, zinc, silver, and gold smelters in discussing the NSO legislation. S. Rep. No. 94-717, 94th Cong., 2nd Sess. 17 (1976); S. Rep. No. 95-127, supra, at 25.²⁴

D. Enforcement of NSO Provisions

Several comments asserted that the proposed regulations made inadequate provision for the enforcement of NSOs

²⁴ The question has also been raised of whether smelters should be eligible for NSOs due to an inability to capture (as opposed to "controlling" or "treating") fugitive emissions. The final regulations reflect the Administrator's view that Congress intended section 119 to deal only with the weak gas stream control problems of smelters (which may include the need to treat captured fugitive emissions), and did not intend eligibility for NSOs to be based on the infeasibility of capturing fugitive emissions. Problems with fugitive emissions capture are not peculiar to smelters, were not the basis for EPA's smelter/SCS policy, and did not underlie the enactment of section 119.

in various respects. One group of comments suggested that EPA should require more assurance that the states issuing NSOs would have an adequate plan and adequate resources to enforce the provisions of its NSOs.

The Administrator has concluded that certain of these suggestions have merit, and has modified § 57.107 of the regulations accordingly. First, a provision has been added under which EPA may require additional assurances that State plans for NSO enforcement are adequate. Under another new provision suggested by the comments, a State may condition the granting of an NSO to a smelter operator upon the payment of a fee by the smelter operator to the State to defray the cost of enforcing the NSO. The Administrator believes this provision is "necessary to maximize the reliability and enforceability" of supplementary control system (SCS) operation within the meaning of section 119(d)(1)(C), in light of the large burden that enforcement of NSO SCS requirements will place on the limited resources of most State and local agencies. The Administrator also believes that it is appropriate to explicitly authorize this condition as a matter of federal law, since the NSO Program itself is federal in nature. This interpretation of section 119(d)(1)(C) is explicitly supported by the legislative history of the section. See, 123 *Cong. Rec.* S13699-13700 (August 4, 1977) (daily ed.) (statement of Senator Muskie).

Certain commenters also argued that the ambient monitoring systems used under NSOs should be owned by the issuing agency, not the smelter operator. In the Administrator's view, however, what is important is not ownership but reliability and accuracy of the ambient monitors used to detect possible NAAQS violations. As a practical matter, EPA believes that acceptable reliability and accuracy will be assured by the operational requirements of § 57.402(a)(3), and by the requirement that officials of the issuing agency have free access to the equipment for checking and calibration. A requirement that records of ambient monitor calibration and maintenance be kept has been added to § 57.404 for this purpose. This approach gives the issuing agency advantages comparable to owning the monitors, without the additional burden of purchasing and operating the monitors. Since the smelter operator benefits greatly from receiving an NSO, and since it must operate SCS monitors anyway, placing this burden on the operator seems reasonable. The states remain free, of course, to require more

or redundant monitors, under whatever financing and operating arrangements they deem appropriate.

II. Subpart B—The Application

A. Effect of Application on SIP Requirements

The proposed regulations provided that NSO applications submitted within two weeks of the effective date of these regulations would have the effect of suspending the applicable federal sulfur dioxide SIP requirements (emission limitations and schedules of compliance) during completion and processing of the application. One commenter argued that EPA should not limit this effect to applications submitted within two weeks, on the ground that this limitation would be a disincentive to smelters which might otherwise attempt to meet existing SIP emission limitations first, and only apply for an NSO if they were unable to meet those emission limitations. The Administrator agrees. Congress apparently did not intend to limit the time during which applications could be made, and smelters which might be able to meet SIP emission limitations should be encouraged to try to do so without jeopardizing their opportunity to apply for an NSO on the same terms as other smelters. Section 57.202 has been modified accordingly.

Another commenter urged that the time given for the completion of NSO applications not be limited to ninety days in all cases. EPA agrees that there may be an occasional situation in which more time for completion of the application is justified. On the other hand, since SIP requirements are suspended during this period, the period must be as short as possible and must not provide any incentive for delay. Section 57.202 has therefore also been modified to give the Administrator discretion to extend the ninety-day period. The Administrator intends to do so only in unusual circumstances, and believes that ninety days is sufficient to complete an application, especially in light of the time which has already elapsed since the proposal of these regulations.

Concern was also expressed that the suspension of the SIP requirements not affect their state law status. The intent of the phrase "federal SIP emission limitation for sulfur dioxide" in both the proposed and the final regulations is limited to the federal law aspects of those requirements (emission limitations and schedules of compliance), and is not intended to affect their enforceability as a matter of state law.

B. Confidentiality

Some commenters expressed concern that the confidential information contained in the application might be released improperly by EPA. The Administrator has concluded, however, that the Agency's procedures for the treatment of confidential information fully protect that information. EPA has recently reviewed these procedures in view of the increased amount of confidential information it now receives under various statutes, including the Toxic Substances Control Act. The Agency has, as a result, amended the provisions of 40 CFR Part 2 to assure the full protection of confidential information consistent with applicable legal requirements. See, 43 FR 39997 (September 8, 1978). These provisions fully protect this information from disclosure by EPA to competitors.²⁵

III. Subpart C—Constant Controls and Related Requirements

A. Constant Controls

Subpart C of the proposed regulations would have required a smelter receiving an NSO to operate its existing constant control equipment at its maximum feasible efficiency and to correct any serious deficiencies in the design or operation of the system which result in significant decreases in its overall efficiency or availability. In addition, no smelter would be permitted to emit strong gas streams directly to the atmosphere without treatment, except when a malfunction necessitated bypassing the acid plant.

Asarco/Magma and Phelps Dodge submitted the major comments on these requirements. The thrust of these comments was that, with respect to interim constant controls, Congress had merely intended that existing controls continue to be operated, and that EPA's proposed interim constant control provisions were therefore unreasonable. In effect, the companies urged that they should not only be exempt from any control of their weak sulfur dioxide gas streams, but that they should also not be required to correct even gross deficiencies in the operation or maintenance of their existing acid plants. In addition, the smelters argued that they should be free to bypass the control equipment whenever process

²⁵ This protection is not undermined by 40 CFR 2.301(g), under which EPA may release certain confidential material when the material is relevant to a proceeding under the Clean Air Act. That provision is required by section 114(c) of the Act. Under EPA's regulations, however, the material could only be released if it was in the public interest to do so, and only after an opportunity for the company to comment on, and judicially contest its release.

equipment produced strong gas streams in excess of the acid plant's capacity or whenever the acid plant has been shut down for maintenance, even though such maintenance is predictable far in advance. According to the companies, this is required by subsections (d)(1) and (d)(4) of section 119, and by its legislative history.

The Administrator disagrees, and believes that these comments misconstrue the statute and the congressional intent. EPA's existing smelter policy addressed the principal control problem facing nonferrous smelters: controlling the weak gas streams produced by certain of their processes. There was no need for the policy to provide relief for the strong gas streams produced by other processes, because they have long been readily treatable in acid plants. Under EPA's policy, the use of SCS in lieu of the treatment of weak streams was therefore conditioned on the control of all strong gas streams by acid plants. As the Asarco/Magma comments note, bypassing during periods of excess gas or for scheduled maintenance was not permitted.²⁶

Congress codified the constant control provisions of the Agency's policy in section 119(d), both as to weak streams and strong streams. The House Report not only explicitly endorses EPA's overall policy,²⁷ it also quotes²⁸ specifically from EPA's Stack Height Increase Guideline, which explains that the interim constant control required is "control of all strong gas streams through properly operated and maintained double contact acid plants (or single contact acid plants where single contact acid plants are already on line)." ²⁹ This requirement for the full and efficient treatment of strong streams is embodied in section 119(d)(1)(C), requiring the use of interim constant controls.

This reading of the congressional intent is further confirmed by the formal

explanation of the provisions of the 1977 Conference bill presented to the Senate by Senator Muskie, chairman of the conference committee. In that statement, he described the interim constant control requirement as

"intended to mean an acid plant which: First, was designed to achieve an optimum level of SO₂ control at the site where it is located; and second, is properly operated and maintained at that site. Where acid plants now in use do not measure up to this standard, it is intended that such acid plants will be upgraded to a level which EPA determines to be optimum either on a smelter-by-smelter or industry-wide basis."³⁰

The companies also commented that Congress intended section 119(d)(4) as a reversal of the EPA policy requiring that existing acid plants fully and efficiently treat the smelters' strong streams. For several reasons, the Administrator believes that section 119(d)(4) instead represents a codification of the Agency's policy that weak stream control systems, such as scrubbers, would not be required until they were found to be economically and technically feasible for a smelter.

First, the interim constant control requirement is imposed by section 119(d)(1)(C), not by section 119(d)(4). The only reference to costs in connection with this requirement is found in subsection (d)(2), which allows the requirement to be waived in the case of a smelter having no existing acid plant, if installation of the acid plant would force the smelter to close.³¹ The fact that the "adequately demonstrated to be reasonably available" language and hearing requirement of subsection (d)(4) are parallel to the provisions of subsections (b)(3), (c)(1), and (e), all of which deal with the weak stream controls that would ultimately allow compliance with the SIP emission limit, is further evidence that subsection (d)(4) relates to additional weak stream controls. Moreover, since Congress knew that acid plants would be the means of compliance with the interim control requirement,³² it would have

been pointless to require hearings on the availability of acid plants to the smelting industry under subsection (d)(4).

A contrary reading of section 119 would also improperly ignore the context in which the section was enacted and the policies Congress sought to further. As discussed more fully in the preamble to the proposed NSO rules, Congress was acting against the backdrop of years of litigation over SIPs by the utility and smelting industries concerning the role of feasibility and the use of SCS and tall stacks in lieu of constant controls on weak streams in SIPs. In the 1977 Amendments, Congress resolved any remaining uncertainty by rejecting the use of dispersion and explicitly requiring that constant controls be used irrespective of feasibility. This action was prompted by mounting concern over health and environmental effects of increased atmospheric loading and transport of sulfur dioxide. See generally, H.R. Rep. No. 95-294, *supra* at 81-94. Because of the particular weak stream control problems facing some smelters, Congress did grant limited relief through section 119 from immediate compliance with the full constant control SIP requirements that would otherwise have applied. There is no indication whatever in the statute or its legislative history, however, that Congress intended to relieve smelters of their existing obligations under the EPA policy and the Act to use available technology—acid plants—to treat their strong gas streams fully and efficiently. To have done so, indeed, would have been a fundamental departure from both the EPA policy and the overall policy on constant controls contained in the 1977 Amendments.

The more modest SIP constant control requirement for smelters found in EPA's policy specified that all strong gas streams be fully and efficiently treated in acid plants. Recognizing that the costs associated with this commonly used technology were much lower than those required for weak stream control, and in view of the judicial decisions affirming the constant control imperatives of the Act, the EPA policy treated the acid plant requirement as an absolute industry-wide minimum, as to which compliance costs were not relevant. The consideration of economic feasibility was instead reserved for the weak stream controls to be required in the future.

That Congress likewise intended section 119(d)(4) to refer to future weak stream controls is clear not only from its endorsement of the Ninth Circuit's

²⁶ See, 40 FR 49371 (October 22, 1975) (proposed SIP provisions for Arizona smelters).

²⁷ H.R. Rep. No. 95-294, *supra* at 61.

²⁸ *Id.* at 63.

²⁹ 41 FR at 7452 (February 18, 1976). The Asarco/Magma comments argue that, in quoting EPA's statement of the interim control requirement in the Stack Height Increase Guideline, the House Committee did not intend to endorse the requirement for increased acid plant capacity to treat strong streams fully, because the Report's quotation ends before the sentence: "Where increased acid plant capacity is required to treat presently untreated strong gas streams, RACT for such gas streams must be double contact acid plants." This sentence, however, merely explains what kind of acid plant must be used when additional capacity is required; it is the prior sentence, quoted by the Committee, that actually creates the requirement for the "control of all strong gas streams" (emphasis added).

³⁰ 123 Cong. Rec. S13699 (August 4, 1977) (daily ed.).

³¹ This provision, included for the benefit of the copper smelters operated by Kennecott at McGill, Nevada and Phelps Dodge at Douglas, Arizona, represents the only major substantive departure by section 119 from the EPA policy.

³² H.R. Rep. No. 95-294, *supra* at 62; H.R. Rep. No. 95-564, *supra* at 138. Asarco/Magma also urge that the interim control requirement was directed solely at the attainment of NAAQS. This is incorrect. Since Congress clearly envisioned that smelters under NSOs would attempt to protect standards through the use of SCS, the Administrator believes that the congressional purpose in requiring the use of interim constant was the same as that underlying the other constant controls requirement of the Act: limiting total SO₂ emissions into the atmosphere.

Kennecott opinion,³³ but also from the House Report's explanation of the (d)(4) provision. That explanation is immediately preceded by a quotation from EPA's Stack Height Increase Guideline, discussing the distinction between technically feasible weak stream control (scrubbers) and the reasonably available controls represented by acid plants on strong streams. The Administrator reads the Committee's explanation, which is based on this quoted distinction, as confirming his interpretation that (d)(4) is addressed to additional constant control systems for controlling weak streams, not to the interim acid plant requirement.

Finally, even if the costs imposed by the interim control requirements were relevant, the Administrator does not believe that they are unreasonable. As EPA explained in the preamble to the proposed regulations, the requirement for the correction of serious deficiencies is not intended to require the upgrading of acid plants except where a deficiency in the design of a component or in the operation or maintenance of the plant results in a significant decrease in the overall efficiency or availability of the acid plant.³⁴

Likewise, the prohibition of emitting strong gas streams in excess of the volume capacity of an acid plant directly to the atmosphere is reasonable. In the preamble to the proposed regulations, EPA noted that most smelters' acid plants are capable of treating the full volume of strong streams generated by process equipment. The comments on this provision suggested only three smelters at which excess gas was even a problem: Asarco's Hayden and Tacoma smelters, and the Magma smelter. Magma asserts that while its acid plant was designed to handle the full gas volume produced by Magma's converters, leakage in the flue system results in a gas volume reaching the acid plant which exceeds its capacity, thus necessitating bypassing or production cutbacks. As EPA noted in the preamble to the proposal, however, this excess gas can be reduced or eliminated by improved maintenance to reduce leakage to the flue system. This view

was confirmed by information gathered at EPA's public hearings, at which a Magma employee stated that maintenance on the flues serving the acid plant was never a high priority at the smelter, and that as a result the flues were allowed to develop holes "as big as a man." Also included in the docket at the time of proposal was testimony by the manager of Asarco's Hayden smelter to the effect that the smelter's acid plant was designed to handle the full volume of gas generated by the smelter's converters, and that improved maintenance would be able to eliminate the leakage into the flue system which was necessitating bypassing there. Asarco's comments establish nothing to the contrary. The Administrator believes that it is reasonable to require these smelters, like all other air pollution sources in the nation, to perform the maintenance necessary to permit their pollution control equipment to operate according to its design. The Administrator also notes that smelters do have the option of upgrading their acid plant capacity to handle the full volume of strong gas generated by their production equipment.³⁵

Another commenter urged that bypassing be permitted when an acid plant has cooled below autothermal operational temperature as the result of an SCS curtailment. The Administrator recognizes that if an acid plant is not receiving gas for a prolonged period of time it can cool to such an extent that some period of warm-up is required before efficient gas treatment is again feasible. SCS curtailments are usually short enough, however, that such cooling will not occur if the acid plant is sealed off at the time the gas feed ends. It is also feasible, and good pollution control practice, to prevent undue cooling or to reheat the plant prior to restarting the process through the use of auxiliary heat or SO₂ injection. The proposed regulations have therefore been

modified to permit NSOs to allow bypassing where an acid plant has received no gas during a prolonged curtailment, but only if smelter-specific NSO provisions are included requiring a smelter to show that it could not reasonably have avoided significant cooling through the use of the practices noted above.

Finally, the companies objected to the prohibition on bypassing strong streams directly to the atmosphere during scheduled or planned maintenance of acid plants, such as the screening of catalyst. The companies assert that Congress intended to prohibit such a requirement, and that it would cause a significant amount of production to be lost.

For the reasons discussed in Section A above, the Administrator believes that Congress intended to ratify EPA's policy requiring full treatment of strong gas streams, rather than to limit the policy as the comments suggest. In addition, none of these comments demonstrated that the production foregone during scheduled maintenance could not, as EPA suggested in the proposal, be rescheduled at other times. This maintenance, unlike repairs of malfunctions, can be scheduled far in advance, and production levels at other times can be increased to compensate for that amount not produced during planned maintenance. The comments also did not dispute that many smelters already schedule shutdowns or reduce production rates for maintenance of production equipment, during which maintenance can also be carried out on acid plants. The Administrator also notes that the need for catalyst screening, the primary type of planned maintenance, can be reduced significantly by improvements in the particulate pre-cleaning portion of the acid plant. This also reduces the amount of production that must be rescheduled.

One main basis on which the comments urged that bypassing be allowed during planned maintenance was that the NAAQS would be protected by the use of SCS anyway, and that the bypass prohibition was therefore not justified as an interim measure necessary for meeting NAAQS.³⁶ The Administrator disagrees. As Congress clearly recognized, supplementary control systems are at best of questionable reliability. With the limited number of monitors the systems use and the complex terrain in which many smelters are located, it is quite possible that standards may be violated because of the absence of a monitor at a

³³ *Kennecott Copper Corp. v. EPA*, 526 F. 2d 1149 (1975).

³⁴ EPA gave as an example of a serious deficiency the use of heat exchangers inadequate to sustain efficient autothermal operation over the range of gas strengths and volumes routinely generated by process equipment. The Agency recognizes that smelter acid plants are not designed to handle gas strengths averaging below about 3.5% SO₂, and did not intend to imply to the contrary. Heat exchangers should, however, be adequate to handle the average gas strengths actually received by the acid plant.

³⁵ Asarco also stated that the existing constant control system (acid plant and liquid SO₂ plant) at its Tacoma smelter was not designed to handle all the strong streams (converter gas) routinely produced there, and that a prohibition on bypassing excess gas would result in large production losses there. The Administrator notes that the Assistant Manager of the Tacoma smelter informed EPA in 1976 that the system was designed to provide sufficient capacity to process all converter gas, and that the technical problems which had resulted in bypassing were then being resolved. A study of the acid plant performed for EPA also confirmed that its capacity could be upgraded and that certain serious deficiencies could be overcome without unreasonable expense. In any event, the Administrator does not believe that Congress intended to exempt smelters from the established requirement to control all strong gas streams simply because existing acid plant capacity or inferior plant design may have to be augmented or upgraded at a particular smelter.

³⁶ No empirical support for this contention was provided.

particular location of high sulfur dioxide concentration under a given set of local meteorological conditions. The significance of this problem is greatly increased when the smelter operates without its interim constant controls, resulting in higher average ambient SO₂ concentration. The reliability of a particular SCS is therefore appreciably undermined during such operations.

This was confirmed by testimony at EPA's public hearing in Tucson indicating that sulfur dioxide emissions from the Phelps Dodge Douglas, Arizona smelter, which operates without sulfur dioxide controls, may cause excessive ambient concentrations of sulfur dioxide at locations not monitored by the smelter's SCS network. The Administrator believes, therefore, that the prohibition on bypassing during planned maintenance is a condition necessary to maximize the reliability and enforceability of the interim SCS measures used to protect NAAQS within the meaning of section 119(d)(1)(C).

Finally, the Administrator does not believe that permitting strong streams to be emitted directly to the atmosphere during maintenance that has been planned in advance is consistent with the requirement of section 119(d)(1)(C) that smelters under NSOs operate using *continuous* controls unless they have received waivers under section 119(d)(2). To do so would permit smelters, on a routine and planned basis, to operate with supplementary controls alone. The Administrator believes that Congress did not intend to allow use of dispersion techniques alone, because it was ratifying EPA's existing policy on the issue, because of the limited reliability of supplementary controls, and because it wanted to limit total atmospheric loading of sulfur dioxide. Considering the number of smelters which may receive NSOs, particularly in the southwestern U.S., permitting operation without controls during planned maintenance would result in the excess emission of a very large amount of additional sulfur dioxide each year. This cannot be reconciled either with the congressional intent to limit total atmospheric loading, or with the intent reflected in the provisions of the 1977 Clean Air Act Amendments especially affecting that part of the country, such as prevention of significant deterioration and visibility protection. Rescheduling production, by comparison, would allow the removal of up to 99% of the SO₂ in these strong streams, which would otherwise be emitted without treatment.

B. Monitoring. Proposed § 57.305(a)(2) of the regulations would have required

"continuous" monitoring of ducts used to bypass gases around required constant controls, and stated that this "monitoring shall be adequate to disclose the time of the bypass, its duration, and the *approximate* volume of gas bypassed" (emphasis added). EPA received two conflicting comments on this provision. A smelter wrote that it could not accurately measure the volume in the bypass stack, and an air pollution control agency wrote that such volume should be measured precisely and that therefore EPA should delete the word "approximate."

The purpose of the monitoring requirement in proposed § 57.305(a)(2) was to give a means for determining whether there was compliance with the bypass provisions of an NSO. This purpose does not require a precise measurement of the volume of gas bypassed; rather, any instrument or device that reveals with a reasonable certainty the extent bypass ducts are open would be sufficient. To clarify this intent, EPA has deleted the word "continuous" from § 57.305(a)(2). In short, whether a monitor is sufficient under this subsection depends on whether it can reliably indicate whether there is compliance with the bypass provisions of the NSO. Although a disclosure of the "approximate" volume of gas bypassed satisfies this purpose, a state may require a more precise measurement if it desires.

EPA emphasizes, as it did in the preamble to the proposed regulations, 44 FR 6291-2, that the primary purpose of the monitoring requirement in § 57.404 is not to determine compliance, but to facilitate the development of improved SCS curtailment criteria and improve understanding of the effects of the smelter's emissions by using specific quantitative emission data to construct more accurate models of the effects of those emissions. The usefulness of the information for modeling purposes would remain substantial even if problems in continuously monitoring stack gas volumetric flow rate do initially occur. These problems should largely be overcome as smelter operators and vendors gain additional experience using these monitors.

The State of Arizona commented that continuous emission monitors should be subject to a redundancy requirement. After consideration of this comment, EPA has decided that while a strict redundancy requirement is not necessary, a requirement of high data recovery is important for purposes of compliance determinations. Therefore, EPA is amending proposed § 57.305(a)(i) by adding this sentence: "Failure of the

monitors to record 95% of the 15-minute periods in any 30-day period shall constitute a violation of the NSO." EPA believes this requirement is "necessary to maximize the reliability and enforceability of * * * interim measures." Section 119(d)(1)(c)(i). It is also reasonable. The State of Arizona, in setting sulfur dioxide emission limitations for copper smelters, found that Kennecott's Hayden smelter achieved a rate of more than 95% data recovery over the last two years when there was no data recovery requirement in effect. EPA also believes that currently available monitors can be highly reliable if operated and maintained properly. This is discussed more fully in the Supplemental Response to Comments document in the docket.

IV. Subpart D—Supplementary Control System Requirements

A. Size of the Designated Liability Area

Under the proposed regulations, a smelter operator would be required to operate a supplementary control system (SCS) in a way that prevents all violations of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide within the smelter's designated liability area (DLA). The DLA is the area within which the smelter's emissions could cause or contribute to violations of NAAQS, and the smelter operator would be required to consent to liability for most violations of standards within the DLA as a condition of receiving the NSO. The proposed regulations provided presumptive DLA radii, based on the emission rates of the smelters without consideration of any constant controls in use. The regulations also permitted the smelter operator to show in its NSO application that other DLA boundaries were more appropriate under actual local terrain and meteorological conditions.

EPA received many comments concerning the size of the DLA. Credible comments made both in writing and at the public hearings indicated that under some terrain and meteorological conditions the proposed size of the DLAs and the number of monitors required were inadequate to protect standards. This was the thrust of comments made by a number of persons living at various distances from the Phelps Dodge copper smelter at Douglas, Arizona. According to these comments, there are recurring incidents of SO₂ concentrations of appreciable severity attributable to the smelter's emissions. The Douglas smelter operates without any constant controls for sulfur dioxide, but employs an SCS that appears to be

basically consistent with the proposed regulations. The Administrator has therefore concluded that some change is needed in the Subpart D regulations to deal with this kind of situation.

Smelter operators and the State of Arizona, however, argued that the proposed DLA radii were too large. In considering changes to the proposed Subpart D regulations, the Administrator has given considerable weight to Arizona's comments, both because Arizona is likely to be enforcing more SCS programs than any other state, and because Arizona has more experience to date than any other state in administering these programs. After considering all pertinent comments, the Administrator has concluded that, as explained below, the Subpart D regulations should be revised both to reduce the size of the presumptive DLA radii, and to provide a means for detecting and remedying excess concentrations at locations not served by SCS monitors. These revisions are intended to respond to both sorts of comments described above.

As to DLA size, the Administrator notes initially that because the radii in the table in § 57.402(c) were based on general (i.e., not site-specific) modeling, that section permitted a smelter operator to demonstrate that different DLA boundaries are appropriate under conditions specific to a given site. This provision is being retained, and EPA believes that it remains the best method available.

A number of considerations, however, support the reduction of the presumptive DLA radii. First, as Arizona points out, the principal emissions that the NSO is intended to deal with are uncontrolled weak streams. The strong streams are required to be controlled through interim constant controls operated at their maximum feasible efficiency. Except during malfunctions, therefore, weak stream emissions will be the primary contributor to total smelter emissions. Second, SCS ambient air quality monitors are required to be located at points of high SO₂ concentrations. Since these points will generally be within DLAs established on the basis of controlled emissions, little is gained towards protecting standards by including a large amount of unmonitored area in the DLA beyond those monitors.

Finally, as Arizona notes, basing DLAs on uncontrolled emissions could create overlapping DLAs among as many as four smelters in Arizona. This could make enforcement of NSO provisions difficult in these areas of overlap, contrary to the basic purpose of having DLAs. Although the Administrator believes that the

proposed regulations addressed this problem reasonably, he agrees that if it is possible to eliminate the problem without undermining the SCS-DLA mechanism, it would make that mechanism more enforceable. The final regulations therefore provide that the presumptive DLA is to be determined based on emissions at the rate associated with the smelter's maximum production capacity, assuming compliance with the interim control emission limit, rather than on the smelter's total potential uncontrolled emissions.³⁷ According to the comments of Arizona and others, this leaves only the overlap between the adjacent Asarco and Kennecott smelters at Hayden, Arizona. The proposed regulations dealing with the overlapping DLAs are being retained as necessary for that situation or other possible overlaps.

To deal with the problem of excessive concentrations at areas without SCS monitors, the regulations have been revised to require that as part of the continuing review of the SCS under § 57.402(f) the smelter operator conduct an active program to determine whether standards are being exceeded at points without monitors either within or outside of the DLA. This program would be expected to include at least the use of mobile monitors,³⁸ modelling, and the conscientious investigation of possible excess concentrations reported by the public. If a violation of NAAQS were discovered through this program, a monitor would be required at that location as part of the SCS network, with corresponding meteorological information acquisition capability as well.

B. Effects of the Consent to Liability

As the Administrator stated in the preamble to the proposed regulations, SCS can be a reliable and enforceable means of preventing violations of NAAQS only if the smelter operator is clearly responsible for all violations of ambient standards in the areas affected by the smelter's emissions. This view is abundantly supported by the legislative history of section 119,³⁹ by EPA's existing smelter program and by judicial

precedent. See, *Bunker Hill Co. v. EPA*, 572 F.2d 1286 (9th Cir. 1977). The only significant comment on the requirement for consent to liability for violations of NAAQS in the DLA was that it was unnecessary because it would be easy for the issuing agency to establish that an isolated source was responsible for violations in its vicinity. The Administrator continues to believe, however, that the enforceability of an SCS depends heavily on the smelter operator's assumption of clear legal responsibility for any violations in the area affected by the smelter's emissions. The assumption of liability provides that smelter operator with a strong incentive to design the SCS procedures and to operate the system in a way that will prevent any violations of standards, and provides the issuing agency an effective and direct means of taking whatever enforcement actions may be necessary to remedy violations should they occur. The Administrator also notes that the commenters questioning the assumption of liability concede that it is only the smelter itself which could be causing violations in a DLA; requiring that concession to be made formally as a condition for using SCS therefore does not seem an unreasonable burden.

Several comments asserted that the assumption of liability should not include criminal liability under section 113(c) of the Act. The Administrator intended the consent to preclude disputing the fact that violations of the NAAQS in the DLA were caused by the smelter's emissions, and thus violated the NSO. Under section 113(c), however, only NSO violations which were committed "knowingly" are criminally enforceable. Section 57.403 has therefore been modified to allow the smelter operator to contest during criminal enforcement proceedings whether violations were committed "knowingly."

Comments also asserted the need to modify the circumstances under which a smelter could show that a violation in its DLA was due to the emissions of another source in excess of that source's "maximum permissible emissions" as defined in § 57.402(e)(2). EPA agrees that the fugitive emissions of another source may cause violations in a smelter's DLA under the circumstances present in Hayden, Arizona, where Asarco and Kennecott operate adjacent smelters. EPA does not believe that this problem is pertinent to any other location. The Agency does recognize, however, that violations resulting from fugitive emissions cannot always be prevented through the use of SCS. The regulations have therefore been modified to require not only that the

³⁷ This will be a rate greater than the plant-wide emission limit if that limit is measured on a long-term (e.g., weekly or monthly) basis, since production rates can be greater for the shorter durations corresponding to the NAAQS than for longer periods such as a week or month.

³⁸ This requirement replaces the mobile monitor required by proposed § 57.402(a)(2). The conduct of the continuing review will still be supervised by the issuing agency.

³⁹ See, e.g., H.R. Rep. No. 95-294, *supra* at 62; 123 Cong. Rec. S13700 (August 4, 1977) (daily ed.) (statement of Sen. Muskie).

SCS be designed to deal with fugitive emissions from another source to the extent possible, but also to allow a smelter operator to show that a given violation resulted from another source's fugitive emissions despite the smelter operator's adherence to the SCS manual provisions applicable to the situation.

Certain commenters also urged that the regulations be revised to allow a showing that violations resulted from excess emissions of another source during a malfunction, where there are no applicable SIP limits, or where another source's emission limit is wholly inadequate to protect the NAAQS. The Administrator does not believe any of these exceptions would be appropriate. Contrary to the views expressed by some commenters, emissions in excess of a federally-approved or promulgated SIP emission limitation do violate that emission limit even if they result from a malfunction. The proposed regulations therefore already account for this situation, and would permit a smelter operator to show that such excess emissions were responsible for the violation.

The absence of a SIP emission limit, or an adequate emission limit, provides no basis for allowing violations in a DLA to be excused, in the Administrator's view. The basic premise on which the use of SCS is based is that the smelter is the sole major source of sulfur dioxide emissions in its area, and therefore that the smelter's emission curtailments can be relied upon to prevent violations of the NAAQS. If another source in the area emits enough sulfur dioxide to invalidate this assumption, the use of SCS should not be permitted and an NSO could not be granted. The provisions of the proposed regulations allowing a smelter operator to show that a given violation was due to the excess emissions of another source were also predicated on the assumption that such a source was ordinarily of consistently low emissions, and that only under very unusual circumstances could its excess emissions result in a violation of NAAQS before the smelter could curtail its emissions to compensate. Similarly, then, if this assumption is not valid in a particular case an NSO should not be issued. Whether a source in the vicinity of a smelter is controlled tightly enough under the SIP to allow the validation of these assumptions is, moreover, an air quality management decision within the discretion of the State, and one over which EPA has little influence. See, *Train v. NRDC*, 421 U.S. 60 (1975); cf. section 119(d)(1)(A). If the State does not choose to impose and enforce a SIP

emission limit tight enough to validate the assumptions underlying the use of SCS, that is within its discretion, and an NSO cannot be granted.

C. Maintenance of Pay

Several commenters suggested that EPA include some provision in the regulations to ensure that production curtailments due to SCS did not result in worker lay-offs or pay reductions. Under section 110(a)(6) of the Act, state implementation plans are required to include the provision that a smelter operator may not temporarily reduce the pay of any employee due to SCS curtailments under an NSO. The Administrator agrees that Congress intended to link sections 110(a)(6) and 119, and has therefore included a new § 57.109 in the final regulations providing that he will not approve or issue an NSO for a smelter in any state for which he has not approved or promulgated a provision satisfying the requirements of section 110(a)(6).

V. Subpart E—Fugitive Emission Evaluation and Control

Fugitive emissions, in contrast to stack emissions, are emitted at low elevations and cause or contribute to ambient violations primarily in the immediate vicinity of the source. SCS emission curtailments, which at many smelters are initiated in response to monitors sited to measure primarily the effects of stack emissions, often fail to prevent violations resulting from fugitive emissions. The proposed NSO regulations required the use of interim measures to deal with this problem. EPA received comments on this proposed requirement and, in response, has carefully reconsidered it and, where appropriate, made changes.

One comment was that EPA had authority to control fugitive emissions only in a SIP, and not in an NSO. This follows from the assertions that a fugitive emission control is not an "emission limitation," and that the sole purpose of section 119 was to postpone the ultimate emission limitation on stack emissions because "no means of emission limitation" has been adequately demonstrated to be reasonably available. Sections 119(b)(3), (c)(2).

Although the Administrator agrees that eligibility for an NSO is to be based solely on the problems of complying with the SIP stack emission limitation, this contention ignores the explicit and unmistakable mandate Congress gave the Administrator in section 119(d)(1)(A) to require "use (of) such interim measures for the period during which (an NSO) is in effect as may be

necessary in (his) judgment * * * to assure attainment and maintenance of the national primary and secondary standards during such period." See also H.R. Rep. No. 95-294, 95th Cong., 1st Sess. 62 (1977). Since fugitive emissions from smelters can result in violations of the ambient standards, their control as a condition of an NSO is appropriate. In addition, interim control measures for fugitive emissions are necessary because while SIPs may include controls for fugitive emissions, it is likely that a smelter's configuration under an NSO will be different from the final compliance configuration assumed in setting the SIP controls.

The proposal required a smelter receiving an NSO to study its fugitive emissions problem unless it was able to show at the time of its application for an NSO that fugitive emissions have no significant effect on ambient air quality in its DLA. The study would have consisted of at least six months of ambient monitoring around the smelter to determine the sources and effects of fugitive emissions of sulfur dioxide, total suspended particulates (TSP), arsenic, and lead.

The only comment received directly pertinent to the monitoring requirement was from the State of Arizona, which stated that it was desirable to measure arsenic, lead, and TSP, as well as SO₂, but queried how the requirement was authorized. Section 119(d)(1)(B)(i) requires interim measures to include "such monitoring as the Administrator determines may be necessary." Monitoring for arsenic, lead, and TSP, as well as SO₂, is necessary to enable the smelter operators, EPA, and state agencies to devise or evaluate control strategies for fugitive emissions of SO₂ that will be compatible with existing or probable EPA and OSHA requirements for the control of process and fugitive emissions of all these pollutants. Indeed, the smelting industry voiced considerable concern during pre-proposal discussion about the potential for conflicting technologies for SO₂ and these other pollutants. In order to develop practicable controls, then, it was necessary to require monitoring for all these pollutants. The final regulations tailor the monitoring requirements more closely to the probable results by requiring monitoring for arsenic only at copper smelters and monitoring for lead only at lead and zinc smelters.⁴⁰

The proposal required that a report on this study, with its minimum six months of monitoring, be completed within 10

⁴⁰ Arsenic is found primarily in copper ores. Zinc ores often contain substantial quantities of lead.

months of the effective date. Then, within 60 days, the smelter would have had to submit for approval a fugitive emission control plan. If this plan called for control of fugitive emissions through the use of engineering techniques (as opposed to SCS), certain increments of progress had to be submitted for approval within 60 days of the plan's approval.

A commenter submitted that the provision for compliance schedules relating to control through engineering should be omitted because the time reasonably required to let contracts and complete compliance plainly will vary from smelter to smelter depending on the nature of the controls required. Instead, this commenter would have each applicant include for approval by EPA a schedule of compliance in the smelter's compliance plan.

In light of all these comments, the Administrator has modified the final regulations in several ways. The goal of the study has been more clearly specified as assessing the sources of significant fugitive emissions from the smelter and their effects on ambient air quality. The specification of six months as the minimum time for monitoring required in the study has been deleted to allow the issuing agency to tailor the study more carefully to the actual conditions at the smelter. In many cases, the Administrator expects that the monitoring will continue for longer than six months. Correspondingly, the time for the submission of the results of the study is to be fixed by the individual NSOs. Finally, the increments of progress required in fugitive emission control plans have been modified considerably, as discussed below in connection with other compliance schedule requirements.

VI. Subpart F—Research and Development

EPA proposed to require each smelter owner to agree, as a condition of receiving an NSO, to commit reasonable resources to a research and development project designed to produce more effective means of meeting the smelter's SIP emission limitation. The proposal set out criteria for approval of a proposed project, the main goal being to insure that taken together, projects conducted under NSOs (as well as independently) should result in technology that will allow all smelters to meet their emission limitations as soon as possible, but in no event later than January 1, 1988, when second NSOs expire. EPA received and has considered several comments on this part of the proposal, some of which resulted in changes as discussed below.

One commenter objected to EPA's asserted assumption of sole responsibility for the approval of research and development projects. This commenter noted that the Conference Committee deleted the House bill's requirement that smelters commit to research and develop "such resources as the Administrator determines to be reasonable" (emphasis added) and substituted the requirement for commitment of "reasonable resources to research and development of appropriate emission control technology," as section 119(d)(1)(C)(ii) provides. This change in wording does not, however, indicate that EPA has little or no authority for judging what constitutes a "reasonable" research and development commitment.

The House bill did not have a separate section paralleling section 119 of the Act; rather, the NSO provisions were part of a section of the House bill dealing with delayed compliance orders. See section 121 of H.R. 6161 as passed, 95th Cong., 1st Sess. (1977). The Conference Committee, while adopting the basic format from the House bill, separated treatment of NSOs and delayed compliance orders, and in doing so partially rewrote the House bill's provisions to accommodate this reorganization. The commenter notes one such change. Nowhere, however, is there an indication that a substantive change was intended to revoke the Administrator's authority to pass on the approvability of research proposals. This is confirmed by the plain language of section 119(d)(1)(C)(ii) which says "The Administrator shall condition the use of any interim measures" (emphasis added) on a smelter's commitment of "reasonable resources to research and develop . . . appropriate emission control technology." This mandate to the Administrator would be meaningless if he was without authority to determine whether proposed resources were "reasonable" and emission control technology was "appropriate." See also, section 119(a)(1)(B).

Proposed § 57.602(b) said that where EPA was not the issuing agency, the smelter must submit its research proposal to EPA at the time it submits the proposal to the issuing agency. This provision may have been misleading, however, since EPA did intend the States to have a role in initially determining the approvability of a research proposal. To reflect this, the regulations promulgated today modify proposed § 57.602(b) to give the issuing agency and the applicant the option simultaneously to submit the research proposal to EPA and the issuing agency.

For the convenience of either, if EPA receives a proposal it will certify whether in the judgment of the Administrator the research proposal is approvable.

As one of the criteria for judging the approvability of a research proposal, EPA proposed to examine "whether the proposed level of funding for the project is consistent with the research and development expenditure levels found in other industries." Today's promulgation clarifies that the relevant comparison is to pollution control research expenditure levels in other industries.

Two smelter owners submitted that this criterion should not be given "heavy reliance" because Congress, in enacting section 119, recognized the unique, marginal economic status of the nonferrous industry. In any event, these commenters say, such comparisons should not be based on a report entitled "Characteristics of Nonferrous Smelter Research and Development Efforts," Item No. II-A-5(b) in the docket, because it fails adequately to disaggregate data relating to nonferrous smelters. Other commenters, including lung associations, environmental groups, and academicians felt that smelters should be required to spend research money above the levels in other industries because of the smelter industry's historical lack of commitment to, and at times downright evasion of, pollution control. These commenters stressed that EPA must be in a position to insist that research projects not be shams, and several suggested that an industry-wide commitment of \$35 million would be appropriate.

EPA shares the desire that section 119(d)(1)(C)(ii)'s mandate for the commitment of "reasonable" pollution control research be followed in fact. Acting on this desire, EPA contracted before proposal with Energy Analysis Associates, which concluded (in a report filed as number II-A-5(b) in the docket) that, although one could develop specific criteria to measure whether a commitment is "reasonable," a general, practical formula yielding a "reasonable" level of commitment could not be developed. EPA then hired Development Planning and Research Associates to investigate the amounts that other industries spent on pollution control research. That study, which is filed as number II-A-5(b) in the docket, shows that the nonferrous smelter industry has historically made the smallest expenditures on pollution control research of any major industry, even though smelters generate disproportionate amounts of pollution on a per unit basis. EPA is aware of, and

will take into consideration, the limits of this study. The Administrator has concluded, however, that this comparison is appropriate as one of several criteria in implementing Congress' call for reasonable pollution control research projects and in administering the Clean Air Act on an even-handed basis.

This comparison is not, however, the only criterion. Among the additional factors the Administrator will consider in assessing any proposed project are: (a) The likelihood that the project will result in more effective means of emission limitation applicable to the smelter and the industry; (b) the probability that the project will improve environmental and occupational control of pollutants other than sulfur dioxide; (c) the possible effects of the project on energy conservation; and (d) other non-air quality health and environmental effects. In assessing the adequacy of a particular project, EPA will also consider the current level of sulfur dioxide control at the smelter as well as the resources of the corporation operating the smelter. EPA's emphasis is on pollution control rather than on process changes that may incidentally yield some control improvement. As explained in the proposed rule's preamble, it will ordinarily be necessary to propose projects involving at least pilot-scale operations to secure project approval.

One commenter contended that the proposed research requirement would be unenforceable through the Act's section 304 citizen suit provision because of "vagueness," but EPA's specific, detailed criteria for judging approvability belies this contention. As noted, a rigid formula for determining what is "reasonable" was attempted, but found impracticable. The regulations are flexible enough to allow for serious though differing research proposals, but specific enough to allow for enforcement and fulfillment of congressional intent. In addition to the specific approvability criteria, for example, the regulations provide that the smelter owner's research proposal must include a fully documented supporting analysis and an evaluation of the consistency of the proposed project with the approvability criteria, as well as the proposed project's specific design, time required for implementation, capital and other costs, expected benefits, evaluation criteria, and supervising agents. Independent engineering reports are required on the completion of each significant stage of the project where the smelter conducts its own research, and each applicant must consent to the

access of each issuing agency to the project as it develops. In this way EPA insures that research projects are not shams, but are "reasonable" commitments that appear likely to produce significant pollution control gains for the smelter or the industry. The terms of a research project required in an NSO would also be enforceable under section 304.

Finally, one commenter wrote that EPA should require annual progress reports, as well as reports on each significant stage, so that projects which appear to be failing will be caught early. Today's promulgation incorporates this suggestion.

VII. Subpart G—Compliance Schedules

The proposed regulations required that compliance with each NSO provision be achieved as expeditiously as practicable and set forth the maximum intervals EPA believed were consistent with this requirement. EPA established these intervals on the "worst case" assumption that a smelter would not begin to comply with its NSO requirements until the NSO's effective date. 44 FR 6293, 6302-6303.

Several smelter owners commented that the compliance schedules for fugitive controls and reconstruction of the acid plants were too short. The regulations have been modified in light of these comments to allow a smelter to submit its own compliance schedule for control of fugitive emissions. This schedule must require the necessary measures to be completed as expeditiously as practicable, and must be approved by the issuing agency and EPA as an amendment of the NSO. Similarly, EPA is modifying the interim constant control compliance schedule requirement proposed in § 57.702 to allow the smelter owner to demonstrate that more than the proposed amount of time is necessary due to special circumstances. EPA emphasizes, however, that only circumstances that are in fact special will justify a final compliance date more than 14 months beyond the NSO's effective date. In most cases, compliance "as expeditiously as possible" will take less than 14 months. Not only was the 14 month interval based on a "worst case" assumption, as explained, but, as noted elsewhere in this preamble, EPA does not intend wide-scale upgrading of the acid plants as a matter of course.

VIII. Subpart H—Waiver of Interim Constant Control Requirements

Subpart H of the proposed regulations set out the procedures and criteria governing the granting of a waiver of interim constant control requirements

where such interim controls would "necessitate" closures for at least one year. Several comments were received on these procedures and criteria, but no change has been made.

One commenter wrote that waiver candidates should not have to submit Appendix A. Appendix A is required from all smelter owners applying for an NSO, and therefore the applicant which also seeks a waiver from interim constant control incurs no additional burden in attaching a completed Appendix A to its waiver request. As explained above, the information specified in Appendix A is necessary to determine, as required by section 119(b)(3), whether the smelter can afford the technology necessary for it to meet its SIP emission limit. It is also necessary to determine, as required by section 119(d)(2), whether the cost of interim controls would necessitate closure of the smelter for at least one year.

Another commenter stated that the public notice provisions regarding waiver requests should apply to action on NSO applications as well. EPA intends to follow the procedures used in evaluating a SIP in proposing to approve an NSO. This involves publishing notice of proposed action in the *Federal Register*, allowing time for submission of written comments, and publishing notice of final action with a response to major comments. These notice procedures comply with the law and enable the public to be informed regarding EPA's action on a request for an NSO. EPA anticipates that the State will hold a hearing on any NSO applications it evaluates.

A State commented that any hearing on a waiver request should be held in the State where the smelter is located. EPA believes the location of the hearing is a decision for the Presiding Officer, who should consider such factors as the convenience to potential hearing witnesses and the State in deciding on an appropriate location.

Finally, a commenter wrote that the regulations should give anyone the opportunity to appear at a hearing and make a statement. As discussed in the preamble to the proposed regulations, the regulations expedite both pre-hearing procedures and final decisions on waiver requests (in part to enable the Administrator to meet the time limit prescribed by Congress), while providing applicants and other interested persons a full opportunity to present pertinent information and views. In particular a would-be hearing participant must file with the Hearing Officer (1) a written request containing certain information necessary for

scheduling, and (2) written comments. Although written comments will constitute the bulk of the evidence submitted at the hearing, "any" person who has filed a request to appear at the hearing may request the Presiding Officer to allow such person to submit all or part of his main comments orally at the hearing in place of written comments. This request must be granted within one week if the Presiding Officer "finds that such person will be prejudiced if he is required to submit such comments in written form." Section 57.805(d)(2). Thus the regulations do give anyone the opportunity to make a statement at a hearing when it is in his interest to do so.

Note.—The Environmental Protection Agency has determined that this notice does not contain a significant regulation requiring a regulatory analysis under Executive Order 12044.

(Secs. 110, 114, 119, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7414, 7419, and 7601), and sec. 406 of Pub. L. 95-95)

Dated: June 13, 1980.

Douglas M. Costle,
Administrator.

The Administrator establishes a new Part 57 in Title 40 of the Code of Federal Regulations, to read as follows:

PART 57—PRIMARY NONFERROUS SMELTER ORDERS

Subpart A—General

Sec.

- 57.101 Purpose and scope.
- 57.102 Eligibility.
- 57.103 Definitions.
- 57.104 Amendment of the NSO.
- 57.105 Submittal of required plans, proposals, and reports.
- 57.106 Expiration date.
- 57.107 The State agency's transmittal to EPA.
- 57.108 Comparable existing SIP provisions.
- 57.109 Maintenance of pay.
- 57.110 Reimbursement to state or local agency.
- 57.111 Severability of provisions.

Subpart B—The Application

- 57.201 Where to apply.
- 57.202 How to apply.
- 57.203 Contents of the application.

Subpart C—Constant Controls and Related Requirements

- 57.301 General requirements.
- 57.302 Performance level of interim constant controls.
- 57.303 Total plant-wide emission level.
- 57.304 Bypass, excess emissions, and malfunctions.
- 57.305 Compliance monitoring and reporting.

Subpart D—Supplementary Control System Requirements

- 57.401 General requirements.

- 57.402 Elements of the supplementary control system.
- 57.403 Consent to liability.
- 57.404 Measurements, records, and reports.
- 57.405 Formulation, approval, and implementation of requirements.

Subpart E—Fugitive Emission Evaluation and Control

- 57.501 General requirement.
- 57.502 Evaluation.
- 57.503 Control measures.

Subpart F—Research and Development Requirements

- 57.601 General requirements.
- 57.602 Approval of proposal.
- 57.603 Criteria for approval.
- 57.604 Evaluation of projects.
- 57.605 Consent.
- 57.606 Confidentiality.

Subpart G—Compliance Schedule Requirements

- 57.701 General requirements.
- 57.702 Compliance with constant control emission limitation.
- 57.703 Compliance with the supplementary control system requirements.
- 57.704 Compliance with fugitive emission evaluation and control requirements.

Subpart H—Waiver of Interim Requirement for Use of Continuous Emission Reduction Technology

- 57.801 Purpose and scope.
- 57.802 Request for waiver.
- 57.803 Issuance of tentative determination; notice.
- 57.804 Request for hearing; request to participate in hearing.
- 57.805 Submission of written comments on tentative determination.
- 57.806 Presiding officer.
- 57.807 Hearing.
- 57.808 Opportunity for cross examination.
- 57.809 Ex parte contacts.
- 57.810 Filing of briefs, proposed findings, and proposed recommendation.
- 57.811 Recommended decision.
- 57.812 Appeal from or review of recommended decision.
- 57.813 Final decision.
- 57.814 Administrative record.
- 57.815 State notification.
- 57.816 Effect of negative recommendation.

Appendix A—Primary Nonferrous Smelter Order (NSO) Application

Authority: Secs. 110, 114, 119, 301, Clean Air Act, as amended (42 U.S.C. 7410, 7414, 7419, and 7601); sec. 406 of Pub. L. 95-95.

Subpart A—General

§ 57.101 Purpose and scope.

(a) *Applicability of the regulations.* The regulations in Subparts A through H govern:

- (1) The eligibility of smelters for a first Primary Nonferrous Smelter Order (NSO) under section 119 of the Clean Air Act;
- (2) The procedures through which a first NSO can be approved or issued by EPA; and

(3) The minimum contents of each first NSO required for EPA issuance or approval under section 119. Subparts I *et seq.*, will contain NSOs in effect for individual smelters.

(b) *State authority to adopt more stringent requirements.* Nothing in this part shall preclude a State from imposing more stringent requirements, as provided by Section 116 of the Clean Air Act.

§ 57.102 Eligibility.

(a) A primary copper, lead, or zinc smelter is eligible for an NSO if it meets the following conditions:

- (1) The smelter was in existence and operating on August 7, 1977;
- (2) The smelter is subject to an approved or promulgated sulfur dioxide (SO₂) State Implementation Plan (SIP) stack emission limitation which is adequate to ensure that National Ambient Air Quality Standards (NAAQS) for SO₂ are achieved without the use of any unauthorized dispersion techniques; and

(3) The Administrator determines, based on a showing by the smelter owner, that no means of emission limitation applicable to the smelter which would enable it to comply with its SIP stack emission limitation for SO₂ has been adequately demonstrated to be reasonably available (taking into account the cost of compliance, nonair quality health and environmental impact, and energy considerations).

(b) For the purposes of this section:

- (1) The following means of emission limitation shall be considered *adequately demonstrated* for copper, lead, and zinc smelters (taking into account nonair quality health and environmental impact and energy considerations, but not the cost of compliance):

(i) The sulfuric acid plant and associated process technology underlying EPA's new source performance standards for primary copper, lead, and zinc smelters (40 CFR Part 60, Subparts P, Q, and R);

(ii) Magnesium oxide concentration (scrubbing);

(iii) Lime/limestone scrubbing; and

(iv) Ammonia scrubbing.

(2) An applicable means of emission limitation which would enable a smelter to comply with its SIP emission limitation for SO₂ shall be considered *reasonably available* to the smelter (taking into account the cost of compliance) if the information submitted under §§ 57.107(a) and 57.203(b) (plus any necessary supplemental information) shows, according to the criteria, procedures, and tests contained in Appendix A to this part, that (after

the installation of the system) the sum of the present value of the smelter's future net income plus its terminal value would exceed the smelter's liquidation (salvage) value.

(3) For the purposes of this section, each adequately demonstrated means of emission limitation which would enable a smelter to comply with its SIP emission limitation for SO₂ shall be considered *applicable* to the smelter unless the smelter operator demonstrates that the use of a particular system at that smelter is technically unreasonable, for reasons specific to that site.

§ 57.103 Definitions.

(a) *The Act* means the Clean Air Act, as amended.

(b) *Active use* refers to an SO₂ constant control system installed at a smelter before August 7, 1977 and not totally removed from regular service by that date.

(c) *Adequate SO₂ emission limitation* means an SIP stack emission limitation which was approved or promulgated by EPA as adequate to attain and maintain the NAAQS in the areas affected by the stack emissions without the use of any unauthorized dispersion technique.

(d) *Administrative Law Judge* means an administrative law judge appointed under 5 U.S.C. 3105 (see also 5 CFR Part 930, as amended by 37 FR 16787), and is synonymous with the term "Hearing Examiner" as formerly used in Title 5 of the United States Code.

(e) *The Administrator* means the Administrator of the United States Environmental Protection Agency, or the Administrator's authorized representative.

(f) *Ambient air* shall have the meaning given by 40 CFR 50.1(e), as that definition appears upon promulgation of this subpart, or as hereafter amended.

(g) *Ambient air quality* refers only to concentrations of sulfur dioxide in the ambient air, unless otherwise specified.

(h) *An approved measure* refers to one contained in an NSO which is in effect.

(i) *Assistant Administrator for Air, Noise & Radiation* means the Assistant Administrator for Air, Noise & Radiation of the United States Environmental Protection Agency.

(j) *Assistant Administrator for Enforcement* means the Assistant Administrator for Enforcement of the United States Environmental Protection Agency.

(k) *Constant controls, control technology, and continuous emission reduction technology* mean systems which limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.

(l) *Effective date of an NSO* means the effective date listed in the Federal Register publication of EPA's issuance or approval of an NSO.

(m) *EPA and the Agency* means the Administrator of the United States Environmental Protection Agency, or the Administrator's authorized representative.

(n) *Fugitive emissions* means any air pollutants emitted to the atmosphere other than from a stack.

(o) *Issuance of an NSO* means the final transmittal of the NSO pursuant to § 57.107(a) by an issuing agency (other than EPA) to EPA for approval, or the publication of an NSO issued by EPA in the Federal Register.

(p) *Issuing agency*, unless otherwise specifically indicated, includes both EPA and the state or local air pollution control agency to which a smelter's owner has applied for an NSO, or which has issued the NSO. Any showings or demonstrations required to be made under this part to the issuing agency are subject to independent determinations by EPA.

(q) *Judicial Officer* means an attorney who is a permanent or temporary employee of the United States Environmental Protection Agency.

(r) *Malfunction* means any unanticipated and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor design, poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. A malfunction exists only for the minimum time necessary to implement corrective measures.

(s) *Maximum production capacity* means either the maximum demonstrated rate at which a smelter has produced its principal metallic final product under the process equipment configuration and operating procedures prevailing on or before August 7, 1977, or a rate which the smelter is able to demonstrate by calculation is attainable with existing process equipment. The rate may be expressed as a concentrate feed rate to the smelter.

(t) *NAAQS and National Ambient Air Quality Standards*, unless otherwise specified, refer only to the National Primary and Secondary Ambient Air Quality Standards for sulfur dioxide.

(u) *Scheduled maintenance* means any periodic procedure, necessary to maintain the integrity or reliability of emissions control performance, which can be anticipated and scheduled in advance. In sulfuric acid plants, it

includes among other items the screening or replacement of catalyst, the re-tubing of heat exchangers, and the routine repair and cleaning of gas cleaning equipment.

(v) *Smelter owner and operator* mean the owner or operator of the smelter, without distinction.

(w) *Supplementary control system (SCS)* means any technique for limiting the concentration of a pollutant in the ambient air by varying the emissions of that pollutant according to atmospheric conditions. For the purposes of this part, the term supplementary control system does not include any dispersion technique based solely on the use of a stack the height of which exceeds good engineering practice (as determined under regulations implementing section 123 of the Act).

(x) *Unauthorized dispersion technique* refers to any dispersion technique which, under section 123 of the Act and the regulations promulgated pursuant to that section, may not be used to reduce the degree of emission limitation otherwise required in the applicable SIP.

(y) Unless otherwise specified in this part, all terms shall have the same meaning given them by the Act.

§ 57.104 Amendment of the NSO.

An NSO shall be amended whenever necessary for compliance with the requirements and purposes of this part.

(a) *Issuance of amendment.* A state or local issuing agency may issue an amendment of any NSO it has issued. Any amendment issued by a State or local issuing agency shall be subject to approval by EPA to the same extent as was the original NSO. Any smelter owner may apply to the agency which originally issued its NSO for an amendment of the NSO at any time. Such an application shall be accompanied by whatever documentation is required by that agency (or EPA) to support the requested amendment.

(b) *Revision of SCS Manual.* Operation in accordance with the revised provisions of an SCS operational manual (see § 57.402(e)) shall not be considered a violation of an NSO while the application for approval of those revisions as NSO amendments is pending before the issuing agency (or EPA) for approval: *Provided, That:*

(1) no violations of NAAQS occur in the smelter's Designated Liability Area during that time; and

(2) the smelter operator has not been informed by the issuing agency or EPA that its application is not adequately documented, unless such deficiency has been remedied promptly.

(c) *Termination or revocation.* This section shall not apply to termination or revocation of NSOs, or to a requirement for the use of additional systems of continuous emission reduction technology under section 119(d)(4) of the Act.

§ 57.105 Submittal of Required Plans, Proposals, and Reports.

The failure of a smelter owner to submit any plan, report, document or proposal as required by its NSO or by this part shall constitute a violation of its NSO.

§ 57.106 Expiration Date.

Each NSO shall state its expiration date. No first NSO shall expire later than January 1, 1983.

§ 57.107 The State or Local Agency's Transmittal to EPA.

(a) *Content and bases of the State or local agency's NSO.* Issuance of an NSO by a State or local agency shall be completed by the issuing agency's transmittal to the appropriate EPA Regional Office of:

- (1) The text of the NSO;
- (2) The application submitted by the smelter owner, except for Appendix A to this part, any correspondence between the issuing agency and the applicant relating to the NSO, and any material submitted in support of the application;
- (3) A concise statement of the State or local agency's findings and their bases; and
- (4) Any documentation or analyses prepared by or for the issuing agency in support of the NSO.

(b) *The State or local agency's enforcement plan.* The transmittal under paragraph (a) of this section shall be accompanied by a description of the issuing agency's plans for monitoring compliance with and enforcement of the NSO. The transmittal shall also include a description of the resources which will be used to implement those plans. If the enforcement plans appear inadequate, EPA may require additional assurances that the NSOs will be adequately enforced.

§ 57.108 Comparable Existing SIP Provisions.

Notwithstanding any other provision of this part, an NSO may contain provisions to which the affected smelter is subject under the applicable EPA-approved state implementation plan (SIP) for sulfur dioxide in lieu of the corresponding provisions which would otherwise be required under this part if the Administrator determines that those SIP provisions are substantially equivalent to the corresponding NSO

provisions which would otherwise be required, and if the Administrator determines that the smelter is in substantial compliance with those SIP provisions. For the purposes of this section, provisions to which the affected smelter is subject under the applicable EPA-approved State Implementation Plan are those which became effective before the smelter owner applied for the NSO.

§ 57.109 Maintenance of Pay.

The Administrator will not approve or issue an NSO for any smelter unless he has approved or promulgated SIP provisions which are applicable to the smelter and which satisfy the requirements of section 110(a)(6) of the Clean Air Act.

§ 57.110 Reimbursement to State or local agency.

As a condition of issuing an NSO, any issuing agency may require the smelter operator to pay a fee to the State or local agency sufficient to defray the issuing agency's expenses in issuing and enforcing the NSO.

§ 57.111 Severability of provisions.

The provisions promulgated in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the invalid provision of application.

Subpart B—The Application

§ 57.201 Where to apply.

Any eligible smelter may apply for an NSO to the appropriate EPA Regional Office or to the appropriate State or local air pollution control agency.

(a) When application is made to EPA, all parts of the application required to be submitted under this subpart shall be sent directly to the Director, Division of Stationary Source Enforcement (EN-341), U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460, Attention: Confidential Information Unit. In addition, the smelter owner shall send a copy of the application, except that part required to be submitted under § 57.203(b) (eligibility), directly to the appropriate EPA Regional Office.

(b) When application is made to the appropriate State or local agency, the smelter owner shall submit one complete copy of all parts of the application required to be submitted under this subpart to that agency, in

addition to the application requirements contained in § 57.201(a), above. If the smelter owner is requesting an advance eligibility determination pursuant to § 57.203(b), such request must be made in writing and shall accompany the copy of the application being sent to the Director of the Division of Stationary Source Enforcement of the Environmental Protection Agency.

(c) If the smelter owner is requesting a waiver of the interim constant control requirement of § 57.301, such request must be sent directly to the Director, Division of Stationary Source Enforcement, at the time of application, in accordance with § 57.802.

§ 57.202 How to apply.

(a) *Letter of intent.* To initiate an application for an NSO, the owner or operator of a smelter shall send a letter of intent to an appropriate air pollution control agency. The letter of intent shall contain a statement of the owner's intent to apply for an NSO, and an agreement to provide any information required under this part. The letter of intent shall be signed by a corporate official authorized to make such commitments. Upon receipt of any letter of intent by the issuing agency, the SIP emission limitation for sulfur dioxide, as to that applicant, shall be deemed suspended for 90 days. The 90 day period may be extended for good cause at the discretion of the Administrator.

(b) *Complete application.* (1) Within the period referred to in paragraph (a) of this section, the smelter owner shall submit its completed application pursuant to § 57.201. Receipt of all parts of a substantially complete application postmarked within the original or extended application period shall be deemed to continue the suspension of the SIP emission limitation for SO₂ until the issuing agency issues or declines to issue an NSO. This suspension shall in all cases terminate, however, 90 days after receipt of the substantially completed application, unless extended for good cause at the discretion of the Administrator. If, in the Administrator's judgment, a good faith effort has been made to submit a complete application, additional time may be granted to allow for correction of minor deficiencies.

(2) If an issuing agency transmits an NSO to EPA for approval before the expiration of the suspension of the federal SIP emission limitation, the suspension shall continue until EPA approves or disapproves the NSO. Such action shall be taken by EPA within 90 days of receipt of a transmittal under § 57.107.

§ 57.203 Contents of the application.

(a) *Claim of confidentiality.* The smelter owner may make a business confidentiality claim covering all or part of the information in the NSO application in accordance with 40 CFR Part 2, Subpart B (41 FR 36906 *et seq.*, September 1, 1976, as amended by 43 FR 39997 *et seq.*, September 8, 1978). A claim is effective only if it is made at the time the material is submitted to the issuing agency or EPA. A claim shall be made by attaching to the information a notice of confidentiality. Information claimed as confidential will be handled by EPA under the provisions of 40 CFR Part 2, Subpart B. If no claim accompanies the information, it may be made available to the public without further notice.

(b) *Eligibility information.* Each smelter owner shall make the showing required by § 57.102(a)(3) by completing and submitting Appendix A to this part and any necessary supplemental information to the issuing agency as a part of its application. Any smelter owner or State may, at its option, simultaneously submit this material to EPA for an advance eligibility determination.

(c) *Current operating information.* A complete NSO application shall also contain the following information:

(1) A process flow diagram of the smelter, including current process and instrumentation diagrams for all processes or equipment which may emit or affect the emission of sulfur dioxide; the characteristics of all gas streams emitted from the smelter's process equipment (flow rates, temperature, volumes, compositions, and variations over time); and a list of all monitoring data and strip charts, including all data, charts, logs or sheets kept with respect to the operation of any process equipment which may emit or affect the emission of sulfur dioxide;

(2) The smelter's maximum daily production capacity (as defined in § 57.103(s)), as of August 7, 1977; the operational rate (in pounds of charge per hour) of each major piece of process equipment when the smelter is operating at that capacity; and the smelter's average and maximum daily production rate for each product, co-product, or by-product, by year, for the past 2 years;

(3) The optimal conversion efficiency of any acid plant or other sulfur dioxide control system under the normal process operating conditions (excluding malfunctions) most conducive to optimal conversion efficiency;

(4) The average conversion efficiency of any acid plant or other sulfur dioxide control system during normal process

operations (excluding malfunctions), by month, during the past 2 years;

(5) The percent of the time the acid plant or other control system was available for service during each month for the past 2 years, excluding down-time for scheduled maintenance, and a full explanation of any major or recurring problems with the system during that time;

(6) The frequency and duration of times during the past 2 years when the SO₂ control system was unavailable because of scheduled maintenance of the system;

(7) A description of all scheduled, periodic shut downs of the smelter during the past 2 years, including their purpose, frequency and duration; and the same information with respect to unscheduled shutdowns;

(8) The gas volume, rates, and SO₂ concentration which the control system was actually designed to accommodate, taking into account any modifications made after its installation;

(9) The average monthly sulfur balance across the process and control equipment, including fugitive emissions, for the past 2 years; and

(10) A description of engineering techniques now in use at the smelter to prevent the release of fugitive emissions into the atmosphere at low elevations.

(d) *The smelter owner's proposals.* The smelter owner shall submit as part of its application draft NSO provisions which would implement the requirements of Subparts C through G of this part. The issuing agency may use these proposals as the basis for any NSO that may be granted, or may modify these proposals in any way it deems necessary in order to comply with the requirements of this part.

(e) *Additional information.* The smelter owner shall designate in its application a corporate officer responsible and authorized to supply supplemental technical and economic information and explanations as required by the issuing agency during the formulation of the NSO. Failure to supply such information and explanations shall constitute a failure to submit a complete application.

(f) *Request for a waiver of constant controls.* Any request for a waiver of the interim constant control requirement of § 57.301 shall be made in accordance with § 57.802. The criteria and procedures for granting the waiver are governed by Subpart H of this part.

Subpart C—Constant Controls and Related Requirements**§ 57.301 General Requirements.**

Each NSO shall require an interim level of sulfur dioxide constant controls to be operated at the smelter, unless a waiver of this requirement has been granted to the owner under Subpart H of this part. Except as otherwise provided in § 57.304, the interim constant controls shall be properly operated and maintained at all times. The NSO shall require the following gas streams to be treated by interim constant controls:

(a) In copper smelters, off-gases from fluidized bed roasters, flash furnaces, NORANDA reactors, electric furnaces and copper converters;

(b) In lead smelters, off-gases from the front end of the sintering machine and any other sinter gases which are recirculated;

(c) In zinc smelters, off-gases from multi-hearth roasters, flash roasters and fluidized bed roasters; and

(d) In all smelters, any other process streams which were regularly or intermittently treated by constant controls at the smelter as of August 7, 1977.

§ 57.302 Performance Level of Interim Constant Controls.

(a) *Maximum feasible efficiency.* Each NSO shall require: that the smelter operate its interim constant control systems at their maximum feasible efficiency, including the making of any improvements necessary to correct the effects of any serious deficiencies; that the process and control equipment be maintained in the way best designed to ensure such operation; and that process operations be scheduled and coordinated to facilitate treatment of process gas streams to the maximum possible extent. Maximum feasible efficiency shall be expressed in the NSO in the form of a limitation on the concentration of SO₂ in the tail gas of each individual control system in combination with an appropriate averaging period, as provided below in paragraphs (b) and (c) of this section.

(b) *The limitation level for SO₂ concentration in the control system tail gas.* The level at which the concentration limitation is set shall take into account fluctuations in the strength and volume of process off-gases to the extent that those fluctuations affect the SO₂ content of the tail gas and cannot be avoided by improved scheduling and coordination of process operations. The limitation shall exclude the effect of any increase in emissions caused by process or control equipment malfunction. The limitation shall take into account

unavoidable catalyst deterioration in sulfuric acid plants, but may prescribe the frequency of catalyst screening or replacement. The NSO shall also prohibit the smelter owner from using dilution air to meet the limitation.

(c) *Averaging period.* (1) The averaging period shall be derived in combination with the concentration limitation and shall take into account the same factors described in paragraph (b). The averaging periods established under this paragraph should generally not exceed the following:

- (i) For sulfuric acid plants on copper smelters, 12 hour running average;
- (ii) For sulfuric acid plants on lead smelters, 6 hour running average;
- (iii) For sulfuric acid plants on zinc smelters, 2 hour running average;
- (iv) For dimethylaniline (DMA) scrubbing units on copper smelters, 2 hour running average.

(2) A different averaging period may be established if the applicant demonstrates that such a period is necessary in order to account for the factors described in paragraph (b) of this section: *Provided*, That the period is enforceable and satisfies the criteria of paragraph (a) of this section.

(d) *Improved performance.* (1) The performance level representing maximum feasible efficiency for any existing control system (e.g., a sulfuric acid plant or a DMA scrubber) shall require the correction of the effects of any serious deficiencies in the system. For the purpose of this paragraph, at least the following problems shall constitute serious deficiencies in acid plants:

- (i) Heat exchangers and associated equipment inadequate to sustain efficient, autothermal operation at the average gas strengths and volumes received by the acid plant during routine process equipment operation;
- (ii) Failure to completely fill all available catalyst bed stages with sufficient catalyst;
- (iii) Inability of the gas pre-treatment system to prevent unduly frequent plugging or fouling (deterioration) of catalyst or other components of the acid plant; or
- (iv) Blower capacity inadequate to permit the treatment of the full volume of gas which the plant could otherwise accommodate, or in leakage of air into the flues leading to the plant, to the extent that this inadequacy results in bypassing of gas around the plant.

(2) Notwithstanding any contrary provisions of § 57.304(c) (malfunction demonstration), no excess emissions (as defined in § 57.304(a)) shall be considered to have resulted from a malfunction in the constant control

system if the smelter owner has not upgraded serious deficiencies in the constant control system in compliance with the requirements of § 57.302(d)(1), unless the smelter owner demonstrates under § 57.304(c) that compliance with those requirements would not have affected the magnitude of the emission.

(e) *Multiple control devices.* (1) At any smelter where off-gas streams are treated by various existing control systems (e.g., multiple acid plants or a DMA scrubber and an acid plant), the NSO shall require the use of those systems in the combination that will result in the maximum feasible net SO₂ removal.

(2) To the extent that compliance with this requirement is demonstrated by the smelter operator to result in excess emissions during unavoidable start up and shut down of the control systems, those excess emissions shall not constitute violations of the NSO.

§ 57.303 Total Plantwide Emission Limitation.

(a) *Calculation of the emission limitation.* Each NSO shall contain a requirement limiting the total allowable emissions from the smelter to the level which would have been associated with production at the smelter's maximum production capacity (as defined in § 57.103(s)) as of August 7, 1977. This limitation shall be expressed in units of mass per time and shall be calculated as the sum of uncontrolled process and fugitive emissions, and emissions from any control systems (operating at the efficiency prescribed under § 57.302). These emission rates may be derived from either direct measurements or appropriately documented mass balance calculations.

(b) *Compliance with the emission limitation.* Each NSO shall require the use of specific, enforceable testing methods and measurement periods for determining compliance with the limitation established under paragraph (a) of this section.

§ 57.304 Bypass, Excess Emissions and Malfunctions.

(a) *Definition of excess emissions.* For the purposes of this subpart, any emissions greater than those permitted by the NSO provisions established under § 57.302 (performance level of interim constant controls) or § 57.303 (plantwide emission limitation) of this subpart shall constitute excess emissions. Emission of any gas stream identified under § 57.301 (a), (b), (c), or (d) of this subpart that is not treated by a sulfur dioxide control system shall also constitute an excess emission under this subpart.

(b) *The excess emission report.* Each NSO shall require the smelter to report all excess emissions to the issuing agency, as provided in § 57.305(b). The report shall include the following:

- (1) Identity of the stack or other emission points where the excess emissions occurred;
- (2) Magnitude of the excess emissions expressed in the units of each applicable emission limitation, as well as the operating data, documents, and calculations used in determining the magnitude of the excess emissions;
- (3) Time and duration of the excess emissions;
- (4) Identity of the equipment causing the excess emissions;
- (5) Nature and cause of such excess emissions;
- (6) Steps taken to limit the excess emissions, and when those steps were commenced;
- (7) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and to prevent the recurrence of such malfunction; and
- (8) At the smelter owner's election, the demonstration specified in paragraph (c) of this section.

(c) *Malfunction demonstration.* Except as provided in § 57.302(e)(2) or in paragraph (d) or (e) of this section, any excess emission shall be a violation of the NSO unless the owner demonstrates in the excess emissions report required under paragraph (b) of this section that the excess emission resulted from a malfunction (or an unavoidable start up and shut down resulting from a malfunction) and that:

- (1) The air pollution control systems, process equipment, or processes were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions;
- (2) Repairs were made as expeditiously as practicable, including the use of off-shift labor and overtime;
- (3) The amount and duration of the excess emissions were minimized to the maximum extent practicable during periods of such emissions; and
- (4) The excess emissions were not part of a recurring pattern indicative of serious deficiencies in, or inadequate operation, design, or maintenance of, the process or control equipment.

(d) *Scheduled maintenance exception.* Excess emissions occurring during scheduled maintenance shall not constitute violations of the NSO to the extent that:

- (1) The expected additional annual sulfur dioxide removal by any control system (including associated process changes) for which construction had not

commenced (as defined in 40 CFR 60.2(g) and (i)) as of August 7, 1977, and which the smelter owner agrees to install and operate under Subpart F, would have offset such excess emissions if the system had been in operation throughout the year in which the maintenance was performed;

(2) The system is installed and operated as provided in the NSO provisions established under Subpart F; and

(3) The system performs at substantially the expected efficiency and reliability subsequent to its initial break-in period.

(e) An NSO may provide that excess emissions which occur during acid plant start-up as the result of the cooling of acid plant catalyst due to the unavailability of process gas to an acid plant during a prolonged SCS curtailment are not excess emissions. If the NSO does so provide, it shall also require the use of techniques or practices designed to minimize these excess emissions, such as the sealing of the acid plant during prolonged curtailments, the use of auxiliary heat or SO_2 injected during the curtailment, or the preheating of the acid plant before start-up of the process equipment it serves.

§ 57.305 Compliance monitoring and reporting.

(a) *Monitoring.* (1) Each NSO shall require compliance with the control system performance requirements established pursuant to this subpart to be determined through the use of continuous monitors for measuring SO_2 concentration.

(i) Such monitors must be installed, operated and maintained in accordance with the performance specifications and other requirements contained in Appendix D to 40 CFR Part 52 or Part 60. The monitors must take and record at least one measurement of SO_2 concentration from the effluent of each control system in each 15 minute period. Failure of the monitors to record at least 95% of the 15-minute periods in any 30-day period shall constitute a violation of the NSO.

(ii) The sampling point shall be located at least 8 stack diameters (diameter measured at sampling point) downstream and 2 diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flame, unless another location is approved by the Administrator.

(iii) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than 4.645m^2 (50ft^2) or at a point no closer to the wall

than 0.914m (3 ft) if the cross sectional area is 4.645m^2 (50ft^2) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall be representative of the concentration in the duct.

(iv) The measurement system(s) installed and used pursuant to this paragraph shall be subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

(v) The use of manual source testing methods (equivalent to 40 CFR Part 60, Appendix A) may also be specified as an acceptable additional (but not alternative) method for making compliance determinations.

(2) Each NSO shall require the monitoring of any ducts or flues used to bypass gases, required under this subpart to be treated by constant controls, around the smelter's sulfur dioxide constant control system(s) for ultimate discharge to the atmosphere. Such monitoring shall be adequate to disclose the time of the bypass, its duration, and the approximate volume of gas bypassed.

(b) *Reporting.* (1) Each NSO shall require that the smelter maintain a record of all measurements required under paragraph (a) of this section. Results shall be summarized monthly and shall be submitted to the issuing agency within 15 days after the end of each month. The smelter owner shall retain a record of such measurements for the duration of the NSO and for as long thereafter as may be necessary for the purpose of including such records in an application for a second NSO.

(2) Each NSO shall require that the smelter maintain a record of all measurements and calculations required under § 57.303(b). Results shall be summarized on a monthly basis and shall be submitted to the issuing agency to 6-month intervals. The smelter owner shall retain a record of such measurements and calculations for the duration of the NSO and for as long thereafter as may be necessary for the purposes of including such information in an application for a second NSO.

(3) The report required under § 57.304(b) shall accompany the report required under paragraph (b)(1) of this section.

Subpart D—Supplementary Control System Requirements

§ 57.401 General requirement.

Except as provided in Subpart E, each NSO shall require the smelter owner to prevent all violations of the NAAQS in the smelter's designated liability area (DLA) through the operation of an approved supplementary control system (SCS).

§ 57.402 Elements of the supplementary control system.

Each supplementary control system shall contain the following elements:

(a) *Air quality monitoring network.* An approvable SCS shall include the use of appropriate ambient air quality monitors to continuously measure the concentration of sulfur dioxide in the air in the smelter's DLA.

(1) The monitors shall be located at all points of expected high SO_2 concentrations necessary to anticipate and prevent possible violations of NAAQS anywhere in the smelter's DLA. The determination of the locations where such concentrations may occur shall take into account all recorded or probable meteorological and operating conditions (including bypassing of control equipment), as well as the presence of other sources of SO_2 significantly affecting SO_2 concentrations in the DLA.

(2) The number and location of sites shall be based on dispersion modeling, measured ambient air quality data, meteorological information, and the results of the continuing review required by paragraph (f) of this section. The system shall include the use of at least 7 fixed monitors unless the issuing agency determines, on the basis of a demonstration by the smelter owner, that the use of fewer monitors would not limit coverage of points of high SO_2 concentration or otherwise reduce the capability of the smelter owner to prevent all violations of the NAAQS in the smelter's DLA.

(3) All monitors shall be continuously operated and maintained and shall meet the performance specifications contained in 40 CFR Part 53. The monitors shall be capable of routine real time measurement of maximum expected SO_2 concentrations for the averaging times of SO_2 NAAQS.

(b) *Meteorological network.* The SCS must have a meteorological assessment capability adequate to predict and identify local conditions requiring emission curtailment to prevent possible violations of the NAAQS. The meteorological assessment capability shall provide all forecast and current information necessary for successful use

of the SCS operational manual required by paragraph (e) of this section.

(c) *Designated liability area.* The system shall be required to prevent all violations of the NAAQS within the smelter's DLA. The DLA of any smelter is the area within which the smelter's emissions may cause or significantly contribute to violations of the NAAQS for SO₂ when the smelter is operating at its maximum production capacity under any recorded or probable meteorological conditions. The boundaries of that area shall be specified in the NSO.

(1) Unless an acceptable demonstration is made under paragraph (c)(2) of this section, the DLA shall be a circle with a center point at the smelter's tallest stack and a minimum radius as given in the following table:

Radius for SO₂
Emissions at Maximum Production Capacity.*

Emission rate in tons per hour	Emission Rate in grams per sec.	Radius in kilometers
16 or less	4,000 or less	11
24	6,000	16
32	8,000	24
40	10,000	32
48 or more	12,000 or more	40

*Maximum emission rates for periods not to exceed 24 hours.

Minimum radii may be determined from the table by linear interpolation.

(2) The NSO may provide for a DLA with different boundaries if the smelter owner can demonstrate through the use of appropriate dispersion modeling and ambient air quality monitoring data that the smelter's controlled emissions could not cause or significantly contribute to a violation of the NAAQS beyond the boundaries of such a different area under any recorded or probable meteorological conditions.

(3) A violation of the NAAQS in the DLA of any smelter shall constitute a violation of that smelter's NSO, unless the issuing agency determines on the basis of a showing by the smelter owner that the smelter owner had taken all emission curtailment action indicated by the SCS operational manual and that the violation was caused in significant part by:

(i) Emissions of another source(s) which were in excess of the maximum permissible emissions applicable to such source(s);

(ii) Fugitive emissions of another source(s); or

(iii) Except as provided by § 57.703(a), the smelter's own fugitive emissions: *Provided*, That the smelter is in compliance with all requirements of or under subpart E of this Part.

(4) For the purposes of this section, maximum permissible emissions for other sources are the highest of:

(i) SIP emission limitation

(ii) Orders in effect under section 113(d) of the Clean Air Act; or

(iii) Compliance date extensions under former section 119 of the Clean Air Act (relating to coal conversions).

(d) *Overlapping designated liability areas.* Notwithstanding any other provisions of this subpart, the following requirements shall apply whenever the designated liability areas of 2 or more smelters do, or may, overlap:

(1) In the case of any NSO applicant that would have a DLA which would overlap with the DLA of any other smelter that has applied for an NSO or has an NSO in effect, the NSO applicant shall include in its application an enforceable joint plan, agreed to by such other smelter(s). In determining whether a joint plan is required, the NSO applicant shall calculate its DLA according to the table in paragraph (c)(1) of this section. The DLA of the other smelter shall be calculated according to the table in paragraph (c)(1) unless the other smelter has an NSO in effect, in which case the boundaries in that NSO shall be used. The enforceable joint plan shall provide for:

(i) Emission curtailment adequate to ensure that the NAAQS will not be violated in any areas of overlapping DLAs; and

(ii) Conclusive prospective allocation of legal liability in the event that the NAAQS are violated in the area of overlapping DLAs.

Such plans may, but need not, include the operation of a joint SCS system. Each NSO shall require adherence by the NSO applicant owner to the joint plan for emission curtailment and allocation of liability, unless the issuing agency determines, pursuant to the provisions of paragraph (c)(2) of this section, that the NSO applicant's DLA does not overlap with that of any other smelter.

(2) In the case of any NSO applicant that would have a DLA which would overlap with the DLA of any other smelter whose owner has not applied for an NSO (and does not have an NSO in effect), the NSO applicant's submittal shall contain a written consent, signed by a corporate official empowered to do so. The consent shall state that if, at any time thereafter, the owner of the other smelter applies for an NSO, and the other smelter's DLA would overlap with the NSO applicant's DLA, the NSO applicant will negotiate and submit an enforceable joint plan for emission curtailment and allocation of liability (as described in paragraph (d)(1) of this section). In determining whether it is

necessary to submit such a consent, each smelter's DLA shall be calculated according to the table set forth in paragraph (c)(1) of this section. The consent shall state that a joint plan shall be submitted within 90 days of the issuing agency's notification to the NSO applicant of receipt of the other smelter's letter of intent, unless the issuing agency determines that the DLAs do not overlap. Failure of the NSO applicant to submit such a plan shall constitute grounds for denial of its NSO application or a violation of an effective NSO, as applicable.

(e) *The SCS operational manual.* Each NSO shall require the smelter to be operated in accordance with the provisions of an SCS operational manual approved by the issuing agency. The SCS operational manual shall describe the circumstances under which, the extent to which, and the procedures through which emissions shall be curtailed to prevent violations of the NAAQS in the smelter's DLA. Failure to curtail emissions when and as much as indicated by the manual or to follow the provisions of the manual implementing the requirements of subparagraph (3) of this paragraph shall constitute a violation of the NSO.

(1) The operational manual shall prescribe emission curtailment decisions based on the use of real time information from the air quality monitoring network dispersion model estimates of the effect of emissions on air quality, and meteorological observations and predictions.

(2) The operational manual shall also provide for emission curtailment to prevent violation of the NAAQS within the smelter's DLA which may be caused in part by stack emissions, and to the extent practicable fugitive emissions, from any other source (unless that other source is a smelter subject to an NSO).

(3) The SCS operational manual shall include (but not be limited to):

(i) A clear delineation of the authority of the SCS operator to require all other smelter personnel to implement the operator's curtailment decisions;

(ii) The maintenance and calibration procedures and schedules for all SCS equipment;

(iii) A description of the procedures to be followed for the regular acquisition of all meteorological information necessary to operate the system;

(iv) The ambient concentrations and meteorological conditions that will be used as criteria for determining the need for various degrees of emission curtailment;

(v) The meteorological variables as to which judgments may be made in

applying the criteria stated pursuant to subparagraph (e)(3)(iv) of this section;

(vi) The procedures through which and the maximum time period within which a curtailment decision will be made and implemented by the SCS operator;

(vii) The method for immediately evaluating the adequacy of a particular curtailment decision, including the factors to be considered in that evaluation;

(viii) The procedures through which and the time within which additional necessary curtailment will immediately be effected; and

(ix) The procedures to be followed to protect the NAAQS in the event of a mechanical failure in any element of the SCS.

(f) *Continuing review and improvement of the SCS.* Each NSO shall require the smelter owner to conduct an active program to continuously review the design and operation of the SCS to determine what measures may be available for improving the performance of the system. Among the elements of this program shall be measures to locate and examine possible places both inside and outside the DLA where unmonitored NAAQS violations may be occurring. Such measures shall include the use of modelling as appropriate and mobile ambient air quality monitors, following up on information and complaints from members of the public, and other appropriate activities. The NSO shall also require the submission of a semi-annual report to the issuing agency detailing the results of this review and specifying measures implemented to prevent the recurrence of any violations of NAAQS.

§ 57.403 Written consent.

(a) *The consent.* The NSO shall include a written consent, signed by a corporate official empowered to do so, in the following form:

As a condition of receiving a Primary Nonferrous Smelter Order (NSO) under section 119 of the Clean Air Act for the smelter operated by (name of company) at (location), the undersigned official, being empowered to do so, consents for the company as follows:

(1) In any judicial or administrative proceeding to enforce the NSO, the company will not contest:

(a) Liability for any violation of the National Ambient Air Quality Standards for sulfur dioxide in the smelter's designated liability area (DLA), except on the ground that a determination under 40 CFR 57.402(c)(3) was clearly wrong; or

(b) The conclusive allocation of liability under NSO provisions satisfying 40 CFR 57.402(d)(1) between the company's smelter

and any other smelter(s) for any violation of the National Ambient Air Quality Standards for sulfur dioxide in an area of overlapping DLAs.

(2) The issuing agency (as defined in 40 CFR 57.103) will be allowed unrestricted access at reasonable times to inspect, verify calibration of, and obtain data from ambient air quality monitors operated by the company under the requirements of the NSO.

(b) *Rights not waived by the consent.* This consent shall not be deemed to waive:

(1) Any right(s) to judicial review of any provisions of an NSO that are otherwise available to the smelter owner or operator under section 307(b) of the Clean Air Act; or

(2) The right to contest, in any forum, that any violation of an NSO was committed "knowingly" within the meaning of section 113(c) of the Clean Air Act.

§ 57.404 Measurements, records, and reports.

(a) *Measurements.* Each NSO shall require the smelter owner to install, operate, and maintain a measurement system(s) for continuously monitoring sulfur dioxide emissions and stack gas volumetric flow rates in each stack (except a stack used exclusively for bypassing control equipment) which could emit 5 percent or more of the smelter's total potential (uncontrolled) hourly sulfur dioxide emissions.

(1) Such monitors shall be installed, operated, and maintained in accordance with the performance specifications and other requirements contained in Appendices D and E to 40 CFR Part 52. The monitors must take and record at least one measurement of sulfur dioxide concentration and stack gas flow rate from the effluent of each affected stack in each fifteen-minute period. (The NSO shall require the smelter operator to devise and implement any procedures necessary for compliance with these performance specifications.)

(2) The sampling point shall be located at least eight stack diameters (diameter measured at sampling point) downstream and two diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flame, unless another location is approved by the Administrator.

(3) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than 4.645 m² (50 ft²) or at a point no closer to the wall than 0.914m (3ft.) if the cross sectional area is 4.645 m² (50 ft²) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall provide a sample which is

representative of the concentration in the duct.

(4) The measurement system(s) installed and used pursuant to this paragraph shall be subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

(5) The results of such monitoring, calibration, and maintenance shall be submitted in the form and with the frequency specified in the NSO.

(b) *Records.* Each NSO shall require the smelter owner to maintain records of the air quality measurements made, meteorological information acquired, emission curtailment ordered (including the identity of the persons making such decisions), and calibration and maintenance performed on SCS monitors during the operation of the SCS. These records shall be maintained for the duration of the NSO, and for as long thereafter as may be necessary for purposes of applying for a second NSO, and shall be furnished to the issuing agency upon request.

(c) *Reports.* Each NSO shall require the smelter owner to:

(1) Submit a monthly summary indicating all places and times at which the NAAQS for SO₂ were violated in the smelter's DLA, and stating the SO₂ concentrations at such times;

(2) Immediately notify EPA and the state agency any time concentrations of SO₂ in the ambient air in the smelter's DLA reaches 0.3 part per million (800 micrograms/cubic meter), 24-hour average, or exceed the warning stage in any more stringent emergency plan in the applicable state implementation plan; and

(3) Make such other reports as may be specified in the NSO.

§ 57.405 Formulation, approval, and implementation of requirements.

(a) *SCS content of the application.* The requirements of § 57.203(d) shall be satisfied with respect to this subpart as follows:

(1) Each NSO application shall include a complete description of any supplementary control system in operation at the smelter at the time of application and a copy of any SCS operational manual in use with that system.

(2) Each NSO application shall contain proposed NSO provisions for

compliance with the requirements of §§ 57.401, 57.402 (c), (d), and (f), 57.403, 57.404, and 57.405(b)(2).

(3) Each NSO application shall include a specific plan for the development of a system fulfilling the requirements of § 57.402 (a), (b), and (e) (covering air quality monitoring network, meteorological network, and the SCS operational manual).

(b) *SCS content of the order.* (1) Each NSO shall include an approved version of the plan described in paragraph (a)(3) of this section and shall provide increments of progress towards its completion.

(2) Each NSO shall require the submission of a final report evaluating the performance and adequacy of the SCS developed pursuant to the approved plan. The report shall include:

(i) A detailed description of how the criteria that form the basis for particular curtailment decisions were derived;

(ii) A complete description of each SCS element listed in § 57.402 (a) through (d) (covering monitoring, meteorology, and the DLA), and an explanation of why the elements fulfill the requirements of those sections;

(iii) A reliability study demonstrating that the SCS will prevent violations of the NAAQS in the smelter's DLA at all times. The reliability study shall include a comprehensive analysis of the system's operation during one or more three-month seasonal periods when meteorological conditions creating the most serious risk of NAAQS violations are likely to occur; and

(iv) A copy of the current SCS operational manual.

(c) *Amendment of the NSO.* Each NSO shall be amended, after the submission of the final report required under paragraph (b)(2) of this section, to reflect the most current approved elements of the SCS and to fulfill all other requirements of this subpart. Each NSO shall also be subsequently amended (as provided in § 57.104) whenever necessary as a result of the program required by § 57.402(f) or to reflect improved SCS operating procedures or other system requirements.

Subpart E—Fugitive Emission Evaluation and Control

§ 57.501 General Requirement.

Each NSO shall require the smelter owner to use such control measures as may be necessary to ensure that the smelter's fugitive emissions do not result in violations of the NAAQS for SO₂ in the smelter's DLA.

§ 57.502 Evaluation.

(a) *Evaluation at the time of application.* Any smelter owner may demonstrate at the time of application for an NSO that the smelter's SO₂ fugitive emissions will not cause or significantly contribute to violations of the NAAQS in the smelter's DLA. If such demonstration is not made, the smelter owner shall submit the design and workplan for a study adequate to assess the sources of significant fugitive emissions from the smelter and their effects upon ambient air quality.

(b) *Evaluation during the first 6 months of the NSO.* The design and workplan of the study shall be approved by the issuing agency and included in the NSO. The study shall commence upon the date when the NSO becomes effective, and an analysis of its results shall be submitted to the issuing agency within the time provided by the NSO. The study shall include an appropriate period during which the ambient air shall be monitored to determine the impact of fugitive emissions of sulfur dioxide, arsenic (at copper smelters only), lead (at lead and zinc smelters only), and total suspended particulates on the ambient air quality in the smelter's DLA.

§ 57.503 Control measures.

The NSO of any smelter subject to the requirements of § 57.502(b) shall be amended as provided in § 57.704(d) to implement the requirement of § 57.501. Measures required to be implemented may include:

(a) *Additional supplementary control.* The use of the supplementary control system, if the additional use of the system does not interfere with the smelter owner's ability to meet the requirements of Subpart D; and

(b) *Engineering and maintenance techniques.* The use of engineering and maintenance techniques to detect and prevent leaks and capture and vent fugitive emissions through appropriate stacks. These techniques include but are not limited to:

(1) For reactors, installation and proper operation of primary hoods;

(2) For roasters, installation and proper operation of primary hoods on all hot calcine transfer points;

(3) For furnaces, installation and proper operation of primary hoods on all active matte tap holes, matte launders, slag skim bays, and transfer points;

(4) For converters, installation and proper operation of primary hoods for blowing operations, and where appropriate, secondary hoods for charging and pouring operations;

(5) For sintering machines, installation and proper operation of primary hoods

on the sinter bed, all hot sinter ignition points, all concentrate laydown points, and all hot sinter transfer points;

(6) For blast furnaces, installation and proper operation of primary hoods on all active slag and lead bullion furnace tap holes and transfer points;

(7) For dross reverberatory furnaces, installation and proper operation of primary hoods on all active charging and discharging points;

(8) Maintenance of all ducts, flues and stacks in a leak-free condition to the maximum extent possible;

(9) Maintenance of all process equipment under normal operating conditions in such a fashion that out-leakage of fugitive gases will be prevented to the maximum extent possible;

(10) Secondary or tertiary hooding on process equipment where necessary; and

(11) Partial or complete building evacuation as appropriate.

Subpart F—Research and Development Requirements

§ 57.601 General requirement.

Each NSO shall require the smelter to conduct or participate in a specific research and development program designed to develop more effective means of compliance with the sulfur dioxide control requirements of the applicable state implementation plan than presently exist.

§ 57.602 Approval of proposal.

(a) *The smelter owner's proposal.* The smelter owner's NSO application shall include a proposed NSO provision for implementing the requirement of § 57.601, a fully documented supporting analysis of the proposed program, and an evaluation of the consistency of the proposed program with the criteria listed in § 57.603. The application shall also specify:

(1) The design and substantive elements of the research and development program, including the expected amount of time required for their implementation;

(2) The annual expected capital, operating, and other costs of each element in the program;

(3) The smelter's current production processes, pollution control equipment, and emissions which are likely to be affected by the program;

(4) Potential or expected benefits of the program;

(5) The basis upon which the results of the program will be evaluated; and

(6) The names, positions, and qualifications of the individuals

responsible for conducting and supervising the project.

(b) *EPA approval.* If the issuing agency will not be EPA, the smelter owner or the issuing agency may also submit to EPA the information specified in paragraph (a) of this section at the same time the information is submitted to the issuing agency. As soon as possible after the receipt of the information described in paragraph (a) of this section, EPA shall certify to the issuing agency and to the applicant whether or not in the judgment of the Administrator the smelter owner's final proposals are approvable.

(c) *Optional preproposal.* The smelter owner may, at its option, submit to EPA for its approval and comment a preproposal generally describing the project the owner intends to propose under paragraph (a) of this section. A preproposal may be submitted to EPA at any time prior to the submission of a proposal under paragraph (a) of this section. As soon as possible after the receipt of a preproposal, EPA shall certify to the applicant (and to any other issuing agency, as applicable) whether or not the project would be approvable. This certification may include comments indicating necessary modifications which would make the project approvable.

§ 57.603 Criteria for approval.

The approvability of any proposed research and development program shall be judged primarily according to the following criteria:

(a) The likelihood that the project will result in the use of more effective means of emission limitation by the smelter within a reasonable period of time;

(b) Whether the proposed funding and staffing of the project appear adequate for its successful completion;

(c) Whether the proposed level of funding for the project is consistent with the research and development expenditure levels for pollution control found in other industries;

(d) The potential that the project may yield industrywide pollution control benefits;

(e) Whether the project may also improve control of other pollutants of both occupational and environmental significance;

(f) The potential effects of the project on energy conservation; and

(g) Other non-air quality health and environmental considerations.

§ 57.604 Evaluation of projects.

In any case where the proposed research and development project is to be conducted wholly by one or more smelter owners, the owner's proposal

shall include a provision for the employment of a qualified independent engineering firm to evaluate and prepare written reports at least annually and, in any case, on each completed significant stage of the program. In any other case, the proposal shall contain a provision for the preparation of such reports by the person conducting any portion of the project. All reports required by this paragraph shall be submitted to EPA and also to the issuing agency if it is not EPA.

§ 57.605 Consent.

Each NSO shall incorporate by reference a binding written consent, signed by a corporate official empowered to do so, requiring the smelter owner to:

(a) Carry out the approved research and development program;

(b) Grant each issuing agency and their contractors access to any information or data employed or generated in the research and development program, including any process, emissions, or financial records which such agency determines are needed to evaluate the technical or economic merits of the program;

(c) Grant physical access to representatives and contractors of each issuing agency to each facility at which such research is conducted;

(d) Grant the representatives and contractors of EPA and the issuing agency reasonable access to the persons conducting the program on behalf of the smelter owner for discussions of progress, interpretation of data and results, and any other similar purposes as deemed necessary by any issuing agency.

§ 57.606 Confidentiality.

The provisions of section 114 of the Act and 40 CFR Part 2 shall govern the confidentiality of any data or information provided to EPA under this subpart.

Subpart G—Compliance Schedule Requirements

§ 57.701 General requirements.

Each NSO shall require the smelter owner to meet all of the requirements of the NSO as expeditiously as practicable. All NSO requirements shall be immediately effective, except to the extent that the owner is able to demonstrate the necessity for additional time. For requirements not immediately effective, the NSO shall provide increments of progress and schedules for compliance. The schedules set forth in this subpart represent the most expeditious compliance practicable only

for those smelters which do not currently have the equipment or systems required by this part.

§ 57.702 Compliance with constant control emission limitation.

Where necessary, each NSO shall require the smelter owner to submit to the issuing agency, within 30 days of the effective date of the NSO, a proposed schedule for compliance with the requirements of Subpart C. No final compliance date shall extend beyond 14 months of the effective date of the NSO, except: For a smelter having no constant controls installed on the effective date, or where the smelter operator demonstrates that special circumstances require more time. The schedule shall include the following increments of progress:

(a) The date by which contracts will be let or purchase orders issued to accomplish any necessary performance improvements;

(b) The date for initiating on-site construction or installation of necessary equipment;

(c) The date by which on-site construction or installation of equipment is to be completed; and

(d) The date for achievement of final compliance with emission limitations.

§ 57.703 Compliance with the supplementary control system requirements.

(a) *Operations of existing SCS.* Each NSO shall require the immediate operation of any existing supplementary control system and the assumption of liability for violations of the NAAQS at existing monitor sites.

(b) *Compliance schedule where no SCS exists.* Where necessary, the NSO shall also require compliance with the requirements of Subpart D to be achieved according to the following schedule:

(1) Within 6 months after issuance of the NSO the smelter shall install all operating elements of the system, begin operating the system, complete all other measures specified in its approved SCS development plan, and begin compliance with the requirements of § 57.404.

(2) Within 9 months thereafter the smelter shall submit the SCS Report, assume liability for all violations of the NAAQS within its designated liability area, and comply with all other requirements of Subpart D.

§ 57.704 Compliance with fugitive emission evaluation and control requirements.

(a) *Plan for fugitive emission control.* The NSO shall provide that within a reasonable period after the submission

of the report on the fugitive emission control study required by § 57.502(b), the smelter owner shall submit to the issuing agency for its approval a proposed fugitive emission control plan, including increments of progress, for compliance with the requirements of §§ 57.501 and 57.503.

(b) *SCS Report.* If the fugitive emission control plan submitted under paragraph (a) of this section proposes to meet the requirements of §§ 57.501 and 57.503 through the additional use of a supplementary control system, the plan shall demonstrate that the use of supplementary controls at that smelter to prevent violations of the NAAQS resulting from fugitive emissions is practicable, adequate, reliable, and enforceable. The plan shall contain increments of progress providing for completion of the implementation of each additional measure, and for corresponding compliance with the requirements of paragraphs (b) and (c) of § 57.404, within four months of approval of the plan by the issuing agency. The plan shall also provide that within three months after completion of implementation of those additional measures, the smelter shall fully comply with the requirements of §§ 57.401 and 57.501 (including the assumption of liability for violations of NAAQS within its designated liability area), and shall submit an additional SCS report for the approval of the issuing agency. This additional final report shall correspond to that submitted under § 57.40(b)(2), except that it need not contain the 3 month study described in § 57.405(b)(2)(iii).

(c) *NSO amendment.* The amendments of the NSO required under § 57.503 shall be effected by the issuing agency as follows:

(1) With respect to the additional use of SCS, upon approval or promulgation of the plan submitted under paragraph (a) of this section and upon approval or promulgation of the requirements for the system described in the additional SCS Report under paragraph (a) of this section;

(2) With respect to the additional use of engineering techniques, upon approval or promulgation of the compliance schedule required by paragraph (a) of this section.

Subpart H—Waiver of Interim Requirement for Use of Continuous Emission Reduction Technology

§ 57.801 Purpose and scope.

(a) This subpart shall govern all proceedings for the waiver of the interim requirement that each NSO provide for the use of constant controls.

(b) In the absence of specific provisions in this subpart, and where appropriate, questions arising at any stage of the proceeding shall be resolved at the discretion of the Presiding Officer or the Administrator, as appropriate.

§ 57.802 Request for waiver.

(a) *General.* (1) Each smelter owner requesting a waiver shall compete, sign and submit Appendix A to this part. Copies of Appendix A may be obtained from any EPA Regional Administrator, or from the Director, Division of Stationary Source Enforcement (EN-341), United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Claims of confidentiality shall be made as provided in § 57.203.

(2) The smelter owner shall append to the completed and signed Appendix A full copies of all documents, test results, studies, reports, scientific literature and assessments required by Appendix A. To the extent that the material consists of generally available published material, the smelter owner may cite to the material in lieu of appending it to Appendix A. The smelter owner shall specifically designate those portions of any documents relied upon and the facts or conclusions in Appendix A to which they relate.

(b) *Effect of submitting incomplete application.* (1) The Administrator, or a person designated by him to review applications for waivers, may advise the smelter owner in writing whenever he determines that additional information is needed in order to make the waiver eligibility determinations required by Section 119(d)(2) of the Act. The smelter owner shall promptly supply such information. All additional information requested under this paragraph and filed in the manner required by paragraph (d) shall be deemed part of Appendix A.

(2) Failure to comply with the requirements of paragraphs (a) and (b)(1) of this section shall be grounds for denial of the requested waiver.

(c) *Time for requesting waivers.* Any request for a waiver must be submitted to the Administrator by the smelter owner at the time of the initial application for an NSO from the State or the Administrator, as the case may be.

(d) *Submission of request.* A copy of Appendix A (plus attachments) which has been completed for the purpose of requesting a waiver of constant control requirements shall be filed with the Administrator, addressed as follows:

Director, Division of Stationary Source Enforcement (EN-341), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Attn: Confidential Information Unit.

(e) *Eligibility.* No smelter shall be eligible for consideration under this subpart unless no constant controls were installed at that smelter as of August 7, 1977.

(f) *Criteria for Decision.* The Administrator shall grant or approve a waiver, whichever is appropriate, for any eligible smelter as to which he finds, in accordance with the methods and procedures specified in Appendix A, that:

- (1) The sum of the present value of the smelter's future net cash flow (after installation of interim constant control equipment) plus its terminal value would be less than the smelter's liquidation (salvage) value; or
- (2) The smelter's average variable costs at all relevant levels of production (after installation of interim constant control equipment) would exceed the weighted average price of smelter output for one year or more.

§ 57.803 Issuance of tentative determination; notice.

(a) *Tentative determination.* (1) The EPA staff shall formulate and prepare:

(i) A "Staff Computational Analysis," using the financial information submitted by the smelter owner under § 57.802 to evaluate the economic circumstances of the smelter for which the waiver is sought;

(ii) A tentative determination as to whether an interim requirement for the use of constant controls would be so costly as to necessitate permanent or prolonged temporary cessation of operations at the smelter for which the waiver is requested. The tentative determination shall contain a "Proposed Report and Findings" summarizing the conclusions reached in the Staff Computational Analysis, discussing the estimated cost of interim controls, and assessing the effect upon the smelter of requiring those controls. The tentative determination shall also contain a proposed recommendation that the waiver be granted or denied, based upon the Proposed Report and Findings, and stating any additional considerations supporting the proposed recommendation. This tentative determination shall be a public document.

(2) In preparing the Proposed Report and Findings, the EPA staff shall attempt to the maximum extent feasible to avoid revealing confidential information which, if revealed, might damage the legitimate business interests of the applicant. The preceding sentence notwithstanding, the tentative determination shall be accompanied by a listing of all materials considered by EPA staff in developing the tentative

determination. Subject to the provisions of § 57.814(a), full copies of all such materials shall be included in the administrative record under § 57.814, except that, to the extent the material consists of published material which is generally available, full citations to that material may be given instead.

(b) *Public notice.* Public notice of EPA's tentative determination to grant or deny an application for a waiver shall be given by:

(1) Publication at least once in a daily newspaper of general circulation in the area in which the smelter is located; and

(2) Posting in the principal office of the municipality in which the smelter is located.

(c) *Individual notice.* Individual notice of EPA's tentative determination to grant or deny an application for a waiver shall be mailed to the smelter owner by certified mail, return receipt requested, and to the air pollution control agency for the State in which the smelter is located.

(d) *Request for individual notice.* EPA shall mail notice of its tentative determination to grant or deny an application for waiver to any person upon request. Each such request shall be submitted to the Administrator in writing, shall state that the request is for individual notice of tentative determination to grant or deny any application for a waiver under section 119(d) of the Clean Air Act, and shall describe the notice or types of notices desired (e.g., all notices, notices for a particular Region, notices for a particular State, notice for a particular city).

(e) *Form of notice.* The notice of tentative determination required to be distributed under paragraphs (b), (c), and (d) of this section shall include, in addition to any other materials, the following:

(1) A summary of the information contained in Appendix A;

(2) The tentative determination prepared under paragraph (a) of this section: *Provided*, That, except in the case of the smelter owner, a summary of the basis for the grant or denial of the waiver may be provided in lieu of the formal determinations required by paragraph (a)(1) of this section;

(3) A brief description of the procedures set forth in § 57.804 for requesting a public hearing on the waiver request, including a statement that such request must be filed within 30 days of the date of the notice;

(4) A statement that written comments on the tentative determination submitted to EPA within 60 days of the date of the notice will be considered by

EPA in making a final decision on the application; and

(5) The location of the administrative record and the location at which interested persons may obtain further information on the tentative determination, including a copy of the index to the record, the tentative determination prepared under paragraph (a) of this section, and any other non-confidential record materials.

§ 57.804 Request for hearing; request to participate in hearing.

(a) *Request for hearing.* Within 30 days of the date of publication or receipt of the notice required by § 57.803, any person may request the Administrator to hold a hearing on the tentative determination by submitting a written request containing the following:

(1) Identification of the person requesting the hearing and his interest in the proceeding;

(2) A statement of any objections to the tentative determination; and

(3) A statement of the issues which such person proposes to raise for consideration at such hearing.

(b) *Grant or denial of hearing; notification.* Whenever (1) the Administrator has received a written request satisfying the requirements of paragraph (a) of this section which presents genuine issues as to the effect on the smelter of the requirement for use of constant controls, or (2) the Administrator determines in his discretion that a hearing is necessary or appropriate, the Administrator shall give written notice of his determination to each person requesting such hearing and the smelter owner, and shall provide public notice of his determination in accordance with § 57.803(b). If the Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues, he shall give written notice of his decision to deny a hearing to the person requesting the hearing.

(c) *Form of notice of hearing.* Each notice of hearing disseminated under paragraph (b) of this section shall contain:

(1) A statement of the time and place of the hearing;

(2) A statement identifying the place at which the official record on the application for waiver is located, the hours during which it will be open for public inspection, and the documents contained in the record as of the date of the notice of hearing;

(3) The due date for filing a written request to participate in the hearing under paragraph (d) of this section;

(4) The due date for making written submissions under § 57.805; and

(5) The name, address, and office telephone number of the hearing Clerk for the hearing.

(d) *Request to participate in hearing.* Each person desiring to participate in any hearing granted under this section, including any person requesting such a hearing, shall file a written request to participate with the Hearing Clerk by the deadline set forth in the notice of hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) If the request is submitted by an organization, a nonbinding list of the persons to take part in the presentation. As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Hearing Clerk shall make available to the public and shall mail to each person who asked to participate in the hearing a hearing schedule.

(e) *Effect of denial of or absence of request for hearing.* If no request for a hearing is made under this section, or if all such requests are denied under paragraph (b) of this section, the tentative determination issued under § 57.803 shall be treated procedurally as if it were a recommended decision issued under § 57.811(b)(2), except that for purposes of §§ 57.812 and 57.813 the term "hearing participant" shall be construed to mean the smelter owner and any person who submitted comments under § 57.803(e)(4).

§ 57.805 Submission of written comments on tentative determination.

(a) *Main comments.* Each person who has filed a request to participate in the hearing shall file with the Hearing Clerk no later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing) any comments which he has on the request for waiver and EPA's tentative determination, based on information which is or reasonably could have been available to that person at the time.

(b) *Reply comments.* Not later than two weeks after a full transcript of the hearing becomes available (or such other date as may be set forth in the notice of hearing), each person who has filed a request to participate in the hearing shall file with the Hearing Clerk any comments he may have on:

(1) Written comments submitted by other participants pursuant to paragraph (a) of this section;

(2) Written comments submitted in response to the notice of hearing;

(3) Material in the hearing record; and

(4) Material which was not and could not reasonably have been available prior to the deadline for submission of main comments under paragraph (a) of this section.

(c) *Form of comments.* All comments should be submitted in quadruplicate and shall include any affidavits, studies, tests or other materials relied upon for making any factual statements in the comments.

(d) *Use of comments.* (1) Written comments filed under this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief, and restricted either to points that could not have been made in written comments, or to emphasizing points which are made in the comments, but which the participant believes can be more forcefully urged in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to either deadline specified by paragraph (a) of this section for the filing of main comments, any person who has filed a request to participate in the hearing may file a request with the Presiding Officer to submit all or part of his main comments orally at the hearing in lieu of submitting written comments. The Presiding Officer shall, within one week, grant such request if he finds that such person will be prejudiced if he is required to submit such comments in written form.

§ 57.806 Presiding Officer.

(a) *Assignment of Presiding Officer.*

(1) The Administrator shall, as soon as practicable after the granting of a request for hearing under § 57.803:

(i) Appoint a Presiding Officer to chair the hearing panel, who shall be either the Assistant Administrator for Air and Waste Management or the Assistant Administrator for Enforcement; or

(ii) Request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make the assignment.

(2) If all parties to the hearing waive their right to have the Agency or an Administrative Law Judge preside at the hearing, the Administrator shall appoint an EPA employee having the qualifications of a Judicial Officer as defined in § 57.103 to serve as Presiding Officer.

(b) *Powers and duties of Presiding Officer.* It shall be the duty of the Presiding Officer to conduct a fair and

impartial hearing, assure that the facts are fully elicited, and avoid delay. The Presiding Officer shall have authority to:

(1) Chair and conduct administrative hearings held under this subpart;

(2) Administer oaths and affirmations;

(3) Receive relevant evidence;

Provided, That the administrative record, as defined in § 57.814, shall be received in evidence;

(4) Consider and rule upon motions, dispose of procedural requests, and issue all necessary orders;

(5) Hold conferences for the settlement or simplification of the issues or the expediting of the proceedings; and

(6) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial conduct of proceedings under this subpart.

§ 57.807 Hearing.

(a) *Composition of hearing panel.* The Presiding Officer shall preside at the hearing held under this subpart. An EPA panel shall also take part in the hearing. In general, the membership of the panel shall consist of EPA employees having special expertise in areas related to the issues to be addressed at the hearing, including economists and engineers. For this reason, the membership of the panel may change as different issues are presented for discussion.

(b) *Additional hearing participants.* Either before or during the hearing, the Presiding Officer, after consultation with the panel, may request that a person not then scheduled to participate in the hearing (including an EPA employee or a person identified by any scheduled hearing participant as having knowledge concerning the issues raised for discussion at the hearing) make a presentation or make himself available for cross-examination at the hearing.

(c) *Questioning of hearing participants.* The panel members may question any person participating in the hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that circumstances compel such cross-examination. However, persons in the hearing audience, including other hearing participants, may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and in his sole discretion, ask these questions.

(d) *Submission of additional material.* Participants in the hearing shall submit for the hearing record such additional material as the hearing panel may request within 10 days following the

close of the hearing, or such other period of time as is ordered by the Presiding Officer. Participants may also submit additional information for the hearing record on their own accord within 10 days after the close of the hearing.

(e) *Transcript.* A verbatim transcript shall be made of the hearing.

§ 57.808 Opportunity for Cross-examination.

(a) *Request for cross-examination.* After the close of the panel hearing conducted under this part, any participant in that hearing may submit a written request for cross-examination. The request shall be received by EPA within one week after a full transcript of the hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature; the extent to which they are in dispute; in the light of the record made thus far, and the extent to which and why they can reasonably be considered material to the decision on the application for a waiver; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement as to why the cross-examination requested can be expected to result in full and true disclosure resolving the issue of material fact involved.

(b) *Order granting or denying request for cross-examination.* As expeditiously as practicable after receipt of all requests for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall issue an order either granting or denying each such request, which shall be disseminated to all persons requesting cross-examination and all persons to be cross-examined. If any request for cross-examination is granted, the order shall specify:

(1) The issues as to which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses; and

(5) The date, time and place of the supplementary hearing at which cross-examination shall take place. In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to

choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign time for cross-examination by that single representative without identifying the representative further.

(c) *Supplementary hearing.* The Presiding Officer and at least one member of the original hearing panel shall preside at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A verbatim transcript shall be made of this hearing.

(d) *Alternatives to cross-examination.* (1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submittal of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require that alternative means of clarifying the record be used whether or not a request to do so has been made under the preceding paragraph. The person requesting cross-examination shall have one week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

§ 57.809 Ex parte communications.

(a) *General.* (1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any member of the decisional body an *ex parte* communication relevant to the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff an *ex parte* communication relevant to the merits of the proceedings.

(b) *Effect of receipt of ex parte communication.* (1) A member of the decisional body who receives or who makes or knowingly causes to be made

a communication prohibited by this subsection shall place in the record all written communications or memoranda stating the substance of all oral communications together with all written responses and memoranda stating the substance of all oral responses.

(2) Upon receipt by any member of the decisionmaking body of an *ex parte* communication knowingly made or knowingly caused to be made by a party or representative of a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the Clean Air Act, require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) "Agency trial staff" means those Agency employees, whether temporary or permanent, who have been designated by the Agency as available to investigate, litigate, and present the evidence, arguments and position of the Agency in the evidentiary hearing or non-adversary panel hearing. Appearance as a witness does not necessarily require a person to be designated as a member of the Agency trial staff;

(2) "Decisional body" means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, Judicial Officer, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff), and any of their staff participating in the decisional process. In the case of a non-adversary panel hearing, the decisional body shall also include the panel members whether or not permanently employed by the Agency;

(3) "*Ex parte* communication" means any communication, written or oral, relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff which was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the member of the decisional body;

(ii) Discussions between the decisional body and either:

(A) Interested persons outside the Agency, or;

(B) The Agency trial staff if all parties have received prior written notice of such proposed communications and have been given the opportunity to be present and participate therein.

(4) "Interested person outside the Agency" includes the smelter owner, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant or party in the hearing and any other interested person not employed by the Agency at the time of the communications, and the attorney or record for such persons.

§ 57.810 Filing of Briefs, Proposed Findings, and Proposed Recommendations.

Unless otherwise ordered by the Presiding Officer, each hearing participant may, within 20 days after reply comments are submitted under § 57.805(b), or if a supplemental hearing for the purpose of cross-examination has been held under § 57.808(c), within 20 days after the transcript of such supplemental hearing becomes available, or if alternative methods of clarifying the record have been used under § 57.808(d), within 20 days after the alternative methods have been employed, file with the Hearing Clerk and serve upon all other hearing participants proposed findings and proposed recommendations to replace in whole or in part the findings and recommendations contained in the tentative determination. Any such person may also file, at the same time, a brief in support of his proposals, together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each participant may file a reply brief concerning alternative proposals. Oral argument may be held at the discretion of the Presiding Officer on motion of any hearing participant or sua sponte.

§ 57.811 Recommended Decision.

As soon as practicable after the conclusion of the hearing, one or more responsible employees of the Agency shall evaluate the record for preparation of recommended decision and shall prepare and file a recommended decision with the Hearing Clerk. The employee(s) preparing the decision will generally be members of the hearing panel and may include the Presiding Officer. Such employee(s) may consult with and receive assistance from any member of the hearing panel in drafting a recommended decision and may also delegate the preparation of the recommended decision to the panel or to

any member or members of it. This decision shall contain the same elements as the tentative determination. After the recommended decision has been filed, the Hearing Clerk shall serve a copy of such decision on each hearing participant and upon the Administrator.

§ 57.812 Appeal From or Review of Recommended Decision.

(a) *Exceptions.* (1) Within 20 days after service of the recommended decision, any hearing participant may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer prior to or during the hearing to which such participant objected, and may appeal such exceptions to the Administrator by filing them in writing with the Hearing Clerk. Such exceptions shall contain alternative findings and recommendations, together with references to the relevant pages of the record and recommended decision. A copy of each document taking exception to the recommended decision shall be served upon every other hearing participant. Within the same period of time each party filing exceptions shall file with the Administrator and shall serve upon all hearing participants a brief concerning each of the exceptions being appealed. Each brief shall include page references to the relevant portions of the record and to the recommended decision.

(2) Within 10 days of the service of exceptions and briefs under paragraph (a)(1) of this section, any hearing participant may file and serve a reply brief responding to exceptions or arguments raised by any other hearing participant together with references to the relevant portions of the record, recommended decision, or opposing brief. Reply briefs shall not, however, raise additional exceptions.

(b) *Sua sponte review by the Administrator.* Whenever the Administrator determines sua sponte to review a recommended decision, notice of such intention shall be served upon the parties by the Hearing Clerk within 30 days after the date of service of the recommended decision. Such notice shall include a statement of issues to be briefed by the hearing participants and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the recommended decision shall be limited to the issues raised by the appellant, except when the Administrator determines that additional issues should be briefed or argued. If the Administrator determines that briefing or argument of additional issues is warranted, all hearing

participants shall be given reasonable written notice of such determination to permit preparation of adequate argument.

(d) *Argument before the Administrator.* The Administrator may, upon request by a party or sua sponte, set a matter for oral argument. The time and place for such oral argument shall be assigned after giving consideration to the convenience of the parties.

§ 57.813 Final Decision.

(a) *After review.* As soon as practicable after all appeal or other review proceedings have been completed, the Administrator shall issue his final decision. Such a final decision shall include the same elements as the recommended decision, as well as any additional reasons supporting his decisions on exceptions filed by hearing participants. The final decision may accept or reject all or part of the recommended decision. The Administrator may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing his final decision. The Hearing Clerk shall file a copy of the decision on all hearing participants.

(b) *In the absence of review.* If no party appeals a recommended decision to the Administrator and if the Administrator does not review it sua sponte, he shall be deemed to have adopted the recommended decision as the final decision of the Agency upon the expiration of the time for filing any exceptions under § 57.812(a).

(c) *Timing of judicial review.* For purposes of judicial review, final Agency action on a request for a waiver of the interim requirement that each NSO provide for the use of constant controls shall not occur until EPA approves or disapproves the issuance of an NSO to the source requesting such a waiver.

§ 57.814 Administrative Record.

(a) *Establishment of record.* (1) Upon receipt of request for a waiver, an administrative record for that request shall be established, and a Record and Hearing Clerk appointed to supervise the filing of documents in the record and to carry out all other duties assigned to him under this subpart.

(2) All material required to be included in the record shall be added to the record as soon as feasible after its receipt by EPA. All material in the record shall be appropriately indexed. The Hearing Clerk shall make appropriate arrangements to allow members of the public to copy all non-confidential record materials during normal EPA business hours.

(3) Confidential record material shall be indexed under (2). Confidential record material shall, however, be physically maintained in a separate location from public record material.

(4) Confidential record material shall consist of the following:

(i) Any material submitted pursuant to § 57.802 for which a proper claim of confidentiality has been made under section 114(c) of the Act and 40 CFR Part 2; and

(ii) The Staff Computational Analysis prepared under § 57.803.

(b) *Record for issuing tentative determination.* The administrative record for issuing the tentative determination required by § 57.803 shall consist of the material submitted under § 57.802 and any additional materials supporting the tentative determination.

(c) *Record for acting on requests for cross-examination.* The administrative record for acting on requests for cross-examination under § 57.808 shall consist of the record for issuing the tentative determination, all comments timely submitted under §§ 57.803(e)(4) and 57.805, the transcript of the hearing, and any additional material timely submitted under § 57.807(d).

(d) *Record for preparation of recommended decision.* The administrative record for preparation of the recommended decision required by § 57.811 shall consist of the record for acting on requests for cross-examination, the transcript of any supplementary hearing held under § 57.808(c), any materials timely submitted in lieu of or in addition to cross-examination under § 57.808(d), and all briefs, proposed findings of fact and proposed recommendations timely submitted under § 57.810.

(e) *Record for issuance of final decision.* (1) Where no hearing has been held, the administrative record for issuance of the Administrator's final decision shall consist of the record for issuing the tentative determination, any comments timely submitted under § 57.803(e)(4), any briefs or reply briefs timely submitted under § 57.812(a) through (c), and the transcript of any oral argument granted under § 57.812(d).

(2) Where a hearing has been held, the administrative record for issuance of the Administrator's final decision shall consist of the record for preparation of the recommended decision, any briefs or reply briefs submitted under § 57.812(a) through (c), and the transcript of any oral argument granted under § 57.812(d).

§ 57.815 State Notification.

The Administrator shall give notice of the final decision in writing to the air

pollution control agency of the State in which the smelter is located.

§ 57.816 Effect of Negative Recommendation.

No waiver of the interim requirement for the use of constant controls shall be granted by the Administrator or a State in the absence of a positive recommendation by the Administrator that such a waiver be granted.

Appendix A—Primary Nonferrous Smelter Order (NSO) Application

Instructions

1. General Instructions

- 1.1 Purpose of the Application
- 1.2 NSO Economic Capability Tests
- 1.3 Confidentiality
- 1.4 Data Entry
- 1.5 Use of Exhibits

2. NSO Financial Reporting Overview

- 2.1 Revenue and Cost Assignment
- 2.2 Transfer Prices on Affiliated Party Transactions
- 2.3 Forecasting Requirements
- 2.4 EPA Furnished Forecast Data
- 2.5 Applicant Generated Forecasts
- 2.6 Depreciation

Detailed Instructions for Each Schedule

- A.1 Constant Controls Forecast Summary
- A.2 Interim Controls Forecast Summary
- B.1 Historical Profit and Loss Summary
- B.1.a Supplemental Historical Revenue Data
- B.1.b Supplemental Historical Cost Data
- B.2 Historical Capital Investment Summary
- B.2.a Cash Proceeds from Liquidation
- C.1 Constant Controls Forecast Profit and Loss Summary
- C.1.a Supplemental Constant Controls Revenue Data
- C.1.b Supplemental Constant Controls Cost Data
- C.2 Constant Controls Sustaining Capital Investment Summary
- D.1 Interim Controls Forecast Profit and Loss Summary
- D.1.a Supplemental Interim Controls Revenue Data
- D.1.b Supplemental Interim Controls Cost Data
- D.2 Interim Controls Sustaining Capital Investment Summary

1. General Instructions

1.1 Purpose of the Application

This application provides financial reporting schedules and the accompanying instructions for EPA's determination of eligibility for a nonferrous smelter order (NSO), and for a waiver of the interim constant controls requirement of an NSO. Although the determination of eligibility for an NSO is prerequisite for the determination of a waiver, Appendix A, as a matter of convenience to applicants, includes both the NSO and waiver tests and reporting schedules.

In order to support an NSO eligibility determination, the applicant must submit operating and financial data as

specified by the schedules included in this application. Specific instructions for completing each schedule are provided in subsequent sections of the instructions. In general, applicants must provide:

(a) Annual income statements, balance sheets and supporting data covering the five most recent fiscal years for the smelter for which the NSO is requested.

(b) Forecasts of operating revenues, operating costs, net income from operations and capital investments for the firm's smelter operations subject to this application, on the basis of anticipated smelter operations after installing additional pollution control facilities required to comply with the smelter's SIP emission limitations.

(c) For smelters applying for a waiver of interim constant controls, forecasts of operating revenues, operating costs, and capital investments for the firm's smelter operations prepared on the basis of anticipated smelter operations after installing additional pollution control facilities required to comply with interim constant control requirements.

1.2 NSO Economic Capability Tests

EPA will evaluate eligibility for an NSO or for a waiver of the interim constant control requirement by the following tests of an applicant's economic capability to undertake additional pollution control expenditures. The test for NSO eligibility employs a present value approach for determining an applicant's economic capability to implement a system of constant control technology that will achieve full compliance with SIP emission limitations. The tests for the waiver of the interim constant control requirements employ variable costing and discounted cash flow standards for evaluating an applicant's economic capability to implement those requirements. The period of analysis for these tests shall be 1980 through 1986, inclusive or yearly to include a period of two full years following completion and startup of the pollution control system. All references to 1980 to 1986 shall be interpreted accordingly and all additional years shall be reported.

1.2.1 Net Income Test. Each applicant must establish that firm is not economically capable of implementing a system of production and/or constant control technology that will achieve full compliance with SIP emission limitation standards.

Inadequate economic capability is defined in this test as an inability to undertake the required installation of new, or modification to existing production and/or constant control

facilities without reducing the present value of the smelters net income and terminal value below the smelter's current salvage value under an orderly plan of liquidation.

1.2.2 Temporary Waiver from Interim Controls. Applicants that do not have an existing constant controls system may apply for a waiver from requirements for the interim controls. Applicants will be eligible for a temporary waiver from the interim constant control requirement if they can establish pursuant to the procedures in this application that the imposition of such control requirements would economically necessitate closure of the smelter facility for a period of one year or longer. The economic justification for a non-permanent closure under this temporary waiver test is defined as a situation in which the smelter's projected operating revenues for one or more years within the forecast period are inadequate to cover variable operating costs anticipated after installing the required interim control technology. Temporary waivers will be granted for only the period of time over which applicants can establish an inability by the firm to cover its variable operating costs. Interim control waiver requests based on the smelter's projected inability to earn adequate income after installation of interim pollution control equipment will be subject to the permanent waiver test.

1.2.3 Permanent Waiver from Interim Controls. Applicants without an existing constant controls system will be eligible for a full waiver from the interim use of such controls if they can establish pursuant to the procedure in this application that an imposition of interim control requirements would necessitate permanent closure of the smelter. Economic justification for a permanent closure is defined as a situation in which the present value of future cash flows anticipated from the smelter after installing the required interim control technology are less than the smelter's current salvage value under an orderly plan of liquidation.

1.2.4 EPA Contact for NSO Inquiries. Inquiries concerning this portion of the requirements for NSO application should be addressed to David M. Rochlin, Environmental Protection Agency, EN 341, 401 M Street SW., Washington, D.C. 20460.

1.2.5 Certification. The NSO Certification Statement must be signed by an authorized officer of the applicant firm.

1.3 Confidentiality

Applicants may request that information contained in this

application be treated as confidential. Agency regulations concerning claims of confidentiality of business information are contained in 40 CFR Part 2, Subpart B (41 FR 36902 *et seq.*, September 1, 1976, as amended by 43 FR 39997 *et seq.*, September 8, 1978). The regulations provide that a business may, if it desires, assert a business confidentiality claim covering part or all of the information furnished to EPA. The claim must be made at the same time the applicable information is submitted. The manner of asserting such claims is specified in 40 CFR 2.203(b). Information covered by such a claim will be handled by the Agency in accordance with procedures set forth in the Subpart B regulations. No information will be disclosed by EPA as to which a claim of confidentiality has been made except to the extent of and in accordance with 40 CFR Part 2, Subpart B. However, if no claim of confidentiality is made when information is furnished to EPA, the information may be made available to the public without notice to the business.

1.4 Data Entry

1.4.1 Rounding. All amounts (including both dollar values and physical units) reported in the schedules and exhibits accompanying this application must be rounded to the nearest thousand and expressed in thousands of dollars or units unless otherwise indicated in the instructions.

1.4.2 Estimates. Where an applicant's records cannot produce the specific data required by this application, the use of estimates will be allowed if a meaningful estimate can be made without significant distortion of the reported results. Data estimates must be supported by attaching on a separate sheet of paper as a part of Exhibit B an explanation identifying where such estimates are used and showing explicitly how the estimates were made.

1.4.3 Missing Data. Applicants must provide, where applicable, all operating and financial data requested by this application. Only substantially complete applications can be accepted for processing by the Agency. Questions concerning data entries for which information is not provided by, or cannot reasonably be estimated from, the applicant's existing accounting records should be addressed to the EPA Contact for NSO Inquiries.

1.5 Use of Exhibits

In addition to data required by the schedules included in this application, the following information must be attached as exhibits.

1.5.1 Exhibit A. Background information on the firm's organizational structure and its associated accounting and financial reporting systems for primary nonferrous activities. This information should include, where applicable, the firm's:

(a) Operating association with and ownership control in consolidated subsidiaries, unconsolidated subsidiaries, joint ventures and other affiliated companies.

(b) Organizational subdivision of its primary nonferrous activities into profit centers, cost centers and/or related financial reporting entities employed to control the operation of its mines, concentrators, smelters, refineries and other associated facilities.

(c) Material and product flows among the smelter subject to this NSO application, other integrated facilities and its affiliated suppliers and/or customers. In the case of integrated facilities, applicants should provide process flow diagrams depicting the operating interrelationships among its mines, concentrators, smelters, refineries and other integrated facilities. For both integrated and nonintegrated facilities, applicants also should describe the proportion contributed to its primary nonferrous activities by material purchases from and product sales to affiliated suppliers and customers.

(d) Annual operating capacity over the five most recent fiscal years for the smelter subject to this application and the firm's other nonferrous facilities. Operating capacity should be defined in terms of the total quantity of throughput that could have been processed with the available facilities after giving appropriate allowance to normal downtime requirements for maintenance and repairs. Operating capacity data also should consider both capacity balancing requirements among processing steps and annual processing yield rates attainable for each facility.

(e) Weighted average analysis of concentrates processed and tonnage produced annually over each of the five most recent fiscal years by the smelter subject to this application. The operators of integrated facilities also should provide annual data over the five-year period on both the sources of and a weighted average analysis of concentrates and ores processed and tonnage produced by individual profit centers.

(f) Accounting system and policies for recording investment expenditures, operating revenues, operating costs and income taxes associated with its primary nonferrous activities. Applicants also should provide a

complete description of allocation techniques employed for assigning investments, revenues, costs and taxes to individual profit, cost or departmental centers for which costs are accumulated. Applicants should further indicate the relationship of cost and/or departmental accounting entities to the firm's established profit centers.

(g) Annual and five-year operating and capital expenditure plans (or budgets) by individual nonferrous profit center. These documents should include previous plans prepared for the five preceding fiscal years as well as the current one-year and five-year operating and capital expenditure plans. At least the current one-year and five-year plans should provide a specific breakdown of investment expenditures and operating costs associated with the operation and maintenance of each profit center's existing and proposed pollution control facilities.

1.5.2 Exhibit B. Supplemental description and explanation of items appearing in the financial reporting schedules.

1.5.3 Exhibit C. Financial data documentation. Applicants must document annual balance sheet, income statement and supporting data reported for the firm's preceding five fiscal years or for that portion of the past five years during which the firm engaged in smelter operations. This documentation should be provided by attaching to the application:

(a) SEC 10-K reports filed by the parent corporation and its unconsolidated subsidiaries for each of the preceding five fiscal years.

(b) Certified financial statements prepared (a) on a consolidated basis for the parent corporation and its consolidated subsidiaries and (b) for the firm's unconsolidated subsidiaries and affiliates. This requirement may be omitted for those years in which SEC 10-K reports have been attached to this Exhibit.

(c) Business Segment Information reports filed with the Securities and Exchange Commission by the firm and its unconsolidated subsidiaries for each of the preceding five years (as available).

2. NSO Financial Reporting Overview

2.1 Revenue and Cost Assignment. The amounts assigned to operations of the smelter subject to this NSO application should include (1) revenues and costs directly attributable to the smelter's operating activities and (2) indirect operating costs shared with other segments of the firm to the extent that a specific causal and beneficial relationship can be identified for the

allocation of such costs to the smelter. Do not allocate revenues and costs associated with central administrative activities for which specific causal and beneficial relationships to the activities of the smelter cannot be established. Nonallocable items include, but are not restricted to, amounts such as dividend and interest income on centrally administered portfolio investments, central corporate administrative office expenses and interest on long-term debt financing arrangements. Provide a detailed explanation of amounts classified as nontraceable on a separate schedule and attach as part of Exhibit B.

2.2 Transfer Prices on Affiliated Party Transactions. Certain transactions by the smelter subject to an NSO application may reflect sales to or purchases from "affiliated" customers or suppliers with whom the smelter has a common bond of ownership and/or managerial control. In preparing this application, affiliated party transactions shall be defined as transactions with any entity that the firm, or its owners, controls directly or indirectly either through an ownership of 10 percent or more of the entity's voting interests or through an exercise of managerial responsibility. Applicants must attach as part of Exhibit B supporting schedules explaining the pricing policies established on affiliated party transactions incorporated in the financial reporting schedules.

Prices on inter-segment material and product transfers within a firm, or on external purchases from and sales to other affiliated suppliers and customers, may differ from the prices on comparable transactions with unaffiliated suppliers and customers. In this event, applicants also should present in the Exhibit B supporting schedules and incorporate in the NSO financial reporting schedules appropriate adjustments for restating affiliated party transactions. Affiliated party transactions should be restated at either (a) equivalent prices on comparable transactions with unaffiliated parties if such price quotations can be obtained or (b) prices that provide the selling entity with a normal profit margin above its cost of sales if a meaningful comparison with unaffiliated transaction prices cannot be established. A "normal" profit margin should be defined as the gross operating profit per dollar of operating revenue that will provide an after-tax rate of return on permanent capital (long-term assets less current liabilities) of no more than eight percent.

2.3 Forecasting Requirements. Applicants must provide the Agency

with financial forecasts (Schedules C.1 and C.2) covering the period from fiscal years 1980 through 1986 or yearly to include a period of two full years following completion and startup of the pollution control system. All references to 1980 to 1986 shall be interpreted accordingly and all additional years shall be reported reflecting applicant expectations about future smelter operations if additional constant controls are required to comply with SIP sulfur dioxide emission limitations.

Applicants requesting either a temporary or permanent waiver from interim constant control requirements also must provide an additional set of financial forecasts (Schedule D.1 and D.2) reflecting anticipated smelter operations with the installation of such controls.

It is recognized that some line items may be the same under both cases. On the other hand, production interruptions or curtailments due to the installation of additional pollution control facilities may require adjustments to certain revenue and cost estimates in the respective control cases. The installation of additional pollution control facilities that involve process changes in the smelter's operations also may require specific forecasts by applicants of associated impacts on incremental operating revenues and costs.

Applicants should make their financial forecasts in terms of nominal dollar estimates. Forecasts of selected parameters provided by EPA will furnish guidelines to an applicant in preparing part of the required cost and revenue estimates. In particular, refined copper, zinc and lead price indices provided in nominal-dollar terms should be used directly by the applicant as given—i.e., the stipulated price estimates should not be inflated. In all cases applicants should disclose the index applied to their revenue and cost forecasts.

2.4 EPA Furnished Forecast Data: In making projections of the period 1980 through 1986, applicants should, except as noted below, use the following indices provided by EPA. These indices are available in the rulemaking docket, or from the INFORMATION CONTACT noted in the Federal Register. The indices are:

- (a) Aggregate industry production of copper, lead and zinc.
- (b) Average capacity utilization factors for primary nonferrous metal producers.
- (c) Refined prices for copper, lead and zinc.
- (d) Wage indices for manufacturing labor. These indices are to be used only

for estimating wage increases after the expiration of the applicant's current labor agreements.*

(e) Gross National Product price deflator.*

(f) Weighted average cost of capital for nonferrous metal producers. The applicant may, in lieu of this estimate, use its own weighted cost of capital estimate, provided that it is generated according to accepted financial theory and is fully documented as part of Exhibit B.

(g) Energy Price Indices. The applicant should use the index in Table 3* for the appropriate product and year to calculate the rate of price increase for each energy product for the period following the expiration of existing contracts. Where contracts expire during the calendar year, prices should be calculated by rounding to the nearest quarter and interpolating to the next calendar year if necessary. The applicant may use instead any reasonable projection made by its own supplier of that energy product, providing the projection is fully documented as part of Exhibit B. EPA or supplier indices are to be used by the applicant only for periods after the expiration of current contracts.

2.5 Applicant Generated Forecasts: Within the specified limitations, applicants may employ any reasonable method of forecasting by-product, co-product and other prices not provided by the Agency. The method selected should be explained and unit prices or costs provided where applicable. The forecast elements should be compatible with an applicant's historical cost and revenue elements to permit direct comparisons of historical and forecasted data. Applicants should attach as part of Exhibit B appropriate schedules explaining variances between forecasted and historical unit costs for the smelter.

An acceptable method of forecasting by-product (e.g., gold and silver) prices would be to (a) compute an average of the 1978 constant-dollar equivalents to a by-product's 1973-1979 prices and (b) inflate the average price by the forecasted general rate of inflation for each successive year over the 1980-1986 forecast period. Similarly, concentrate prices could be estimated by applying forecasts of the appropriate refined price index to typical contractual terms indicated for 1979 purchases from unaffiliated suppliers.

* This information appears in "Energy Price Indices, Manufacturing Wages Indices, and Gross National Product Deflators, 1980-1986," an EPA report available in the docket or from the INFORMATION CONTACT listed in the Federal Register notice.

To the maximum extent practicable, by-product, co-product and (when applicable) unaffiliated concentrate prices should be stated at market prices adjusted to f.o.b. smelter. Adjustments to these pricing bases should be made to reflect differences in grades and types of production. All adjustments should be consistent with expected sales, grades and types of concentrate processes. Applicants should attach as part of Exhibit B schedules describing and explaining the methods used to forecast these revenue and cost items and the adjustments required for these revenue and cost forecasts.

Applicants should explain fully any changes from the historical data that are required to forecast labor productivity, ore/concentrate grade and composition, materials and energy consumption per unit of output, yield rates and other physical input/output relationships.

Existing contractual terms should be used in forecasting those sales or input costs or prices to which the applicant is committed by contracts. The use of contract-dictated prices should be disclosed and supported by attaching as part of Exhibit B the terms and duration of labor and other supplier arrangements.

Cost of compliance estimates need not be to the accuracy of final design/bid estimates; feasibility grade estimates will be acceptable. Updated cost of compliance estimates used in internal five year plans or specially prepared internal estimates of costs of compliance will generally be satisfactory.

2.6 Depreciation. Depreciation refers to that used for Federal Income Tax purposes.

Constant Controls Forecast Summary—Schedule A.1

General

All applicants must complete this schedule and its supporting schedules under the conditions where the applicant would undertake sufficient additional investment in pollution control facilities to achieve full compliance with Agency emission limitation standards.

Line 01—Net Income from Operations. Enter for each year from 1980 through 1986 the amount reported in Schedule C.1, Line 25.

Line 02—Constant Controls Capital Investment. Enter the estimated capital outlays for constant controls in the years which outlays would be made. These values shall correspond to the investment estimates shown in the supporting schedules for Line 18 of Schedule C.1. Changes in working capital investment due to investment

constant controls facilities may be added to the capital investment estimates shown in Schedule C.1.

Line 03—Sustaining Capital. Enter for each year from 1979 through 1985, the amounts reported in Schedule C.2, Line 07.

Line 04—Total. Enter the sum of Line 02 and Line 03 for each year.

Line 05—Adjusted Cash Flow Projections. Enter for each year from 1979 through 1985 the difference between amounts reported on Line 01 and 04.

Line 06—Discount Factors. Enter the discount factor for each year from 1979 through 1985 corresponding to the weighted cost of capital as furnished by EPA or estimated by the applicant pursuant to the instructions under Section 2.5.

Line 07—Present Value of Future Cash Flows. Enter for each year from 1979 through 1985 the product of Line 05 times Line 06.

Line 08—Terminal Value. Enter under the total column, the estimated terminal value of the smelter. This shall be computed by capitalizing the forecasted net income plus after-tax interest expense on long-term debt (Schedule C.1, Line 23) from operations for 1986 by the historical cost of capital as furnished by EPA. Specifically, multiply net income plus the after-tax interest expense on long term debt for the last year by year forecast by 10.6.

Line 09—Discount Factor. Enter the appropriate discount factor corresponding to the weighted cost of capital as furnished by EPA or estimated by the Applicant pursuant to instructions under Section 2.5.

Line 10—Present Value of Terminal Salvage Value. Enter the product of Line 08 times Line 09.

Line 11—Present Value of Future Cash Flows. Enter the sum of amounts previously reported on Line 07 for 1979 through 1985.

Line 12—Total Present Value. Enter the sum of Line 10 plus Line 11.

Line 13—Current Salvage Value. Enter the amount reported in Schedule B.2.a, Line 17 if the value is greater than zero. If the value is zero or less enter zero.

Line 14—Net Present Value. Enter the difference between Line 12 and 13. Applicants reporting a negative net present value will be eligible for a waiver from full compliance with constant control standards for SIP sulfur dioxide emission limitations. Applicants that do not have an existing system of constant control technology also must complete Schedule A.2 and Schedule D.1 and D.2 to determine their eligibility for

a temporary or permanent waiver from interim control requirements.

Interim Controls Forecast Summary—Schedule A.2

General

Applicants that do not have an existing system of constant control technology must complete this schedule and its supporting schedules if they want to request a waiver from interim control requirements.

Line 01—Gross Operating Profit. Enter for each year from 1980 through 1986, the amount reported in Schedule D.1, Line 14. Applicants will be eligible for a temporary waiver from the interim development of constant control technology for sulfur dioxide emissions if the reported gross operating profit is a negative value for one or more years during the 1980 through 1986 forecast period. Applicants also should complete parts B and C of Schedule A.2 to determine eligibility for a permanent waiver from interim-control requirements.

Line 02—Net Income from Operations. Enter for each year from 1980 through 1986 the amount reported in Schedule D.1, Line 25.

Lines 03 and 04—Depreciation and Amortization. Enter for each year from 1980–1986 the amounts reported in Schedule D.1, Lines 18 and 19.

Line 05—Operating Cash Flow. Enter for each year from 1980–1986 the total of amounts reported on Lines 02 through 04.

Line 06—Interim Controls Capital Investment. Enter the estimated capital outlays for interim controls for the years during which outlays would be made. These values shall correspond to the investment estimates shown in the supporting schedules for Line 18 of Schedule D.1. Changes in working capital investment due to investment in interim controls facilities may be added to the capital investment estimates shown in Schedule D.1.

Line 07—Sustaining Capital. Enter for each year from 1980–1986, the amounts reported in Schedule D.2, Line 07.

Line 08—Total. Enter the sum of Line 06 and Line 07 for each year.

Line 09—Net Cash Flow Projections. Enter for each year from 1980 through 1986 the difference between the amounts reported on Line 05 and 08.

Line 10—Discount Factors. Enter the discount factor for each year from 1980–1986 corresponding to the weighted cost of capital as furnished by EPA or estimated by the applicant pursuant to the instructions under Section 2.5.

Line 11—Present Value of Future Cash Flows. Enter for each year from

1980-1986, the product of Line 09 times Line 10.

Line 12—Terminal Value. Enter under the Total column, the estimated terminal value of the smelter. This shall be computed by capitalizing the forecasted net income plus after-tax interest expense on long-term debt (Schedule D.1, Line 23) from operations for 1986 by the historical cost of capital as furnished by EPA. Specifically, multiply net income plus after-tax interest expense on long-term debt for the last year of the year by forecast by 10.6.

Line 13—Discount Factor. Enter the appropriate discount factor corresponding to the weighted cost of capital as furnished by EPA or estimated by the applicant pursuant to instructions under Section 2.5.

Line 14—Present Value of Terminal Salvage Value. Enter the product of Line 12 times Line 13.

Line 15—Present Value of Future Cash Flows. Enter the sum of amounts previously reported on Line 11 for 1980-1986.

Line 16—Total Present Value. Enter the sum of Line 14 plus Line 15.

Line 17—Current Salvage Value. Enter the amount reported in Schedule B.2.a, Line 17, if the value is greater than zero. If the value is zero or less, enter zero.

Line 18—Net Present Value. Enter the difference between amounts reported on Lines 16 and 17. Applicants reporting a negative net present value will be eligible for a permanent waiver from interim use of a constant control system for sulfur dioxide emissions.

Historical Profit and Loss Summary—Schedule B.1

General

Report annual revenues, costs and income taxes assignable to operation of the smelter subject to this NSO application. Assignable revenues and costs should include only the results of transactions either (1) directly associated with smelter operations or (2) for which the applicant can establish a causal and beneficial relationship with smelter operations pursuant to instructions in Section 2.1. The annual data requested in this schedule should be reported for each of the five fiscal years immediately preceding the year in which this application is filed or for that portion of the five-year period during which the firm engaged in smelter operations.

Line 01—Primary Metal Sales. Enter for each fiscal year the amount reported in Schedule B.1.a., Line 40.

Line 02—Co-Product and By-Product Sales. Report annual revenues, net of

returns and allowances, derived from smelter sales and/or transfers of co-products and by-products to both unaffiliated and affiliated customers. Attach as part of Exhibit B a supporting schedule for each major co-product and by-product component of smelter revenues. Segregate the revenues reported by major co-product and by-product components into their unaffiliated customer and affiliated customer elements. Report for each component's unaffiliated and affiliated customer revenue elements the (1) average grade of product sold, (2) actual quantity sold, (3) average price per unit and (4) total smelter revenues. Also show for each product line any adjustments required to restate transfer prices and explain the basis for such adjustments. Refer to the NSO Financial Reporting Overview Section 2.2 on "Transfer Prices on Affiliated Party Transactions" for instructions on the restatement of affiliated customer revenues.

Line 03—Tolling Service Revenues. Enter for each year the amount reported in Schedule B.1.a., Line 53.

Line 04—Other Operating Revenues. Report annual revenues directly associated with smelter operations that have not previously been reported on Lines 01 through 03. Attach as part of Exhibit B a schedule showing the types and amounts of sales reported as other operating revenue. The following non-operating revenue and income items should not be included as other operating revenue or as a part of revenues reported on Line 01 through 03.

- Royalties, licensing fees and other income from intangibles
- Interest and dividend income on portfolio investments
- Equity in income (loss) of unconsolidated subsidiaries and affiliates
- Gain (loss) from discontinued operations and disposal of property
- Minority interest adjustment to consolidated subsidiary income.
- Extraordinary items.

Line 05—Total Operating Revenue. Enter the total of amounts reported on Lines 01 through 04 for each year.

Line 06—Concentrates Processed. Report the cost of concentrates processed and sold or transferred to unaffiliated and affiliated customers from Schedule B.1.b, Line 13. Concentrates purchased from unaffiliated suppliers should be valued at the actual prices paid. Concentrates purchased from affiliated suppliers should be valued at or, if necessary, restated to equivalent prices quoted by unaffiliated suppliers. If prices used to report revenues are c.i.f. and

concentrate costs are f.o.b. smelter, all transportation charges paid on the seller's or buyer's account should be excluded from smelter expense. Attach as part of Exhibit B supporting schedules showing the:

- Annual value of concentrate purchases classified according to purchases from unaffiliated and affiliated suppliers.
- Cost of sales adjustments to concentrate purchases for net annual additions to or withdrawals from concentrate inventories, freight-in on concentrate purchases and inventory spoilage.
- Impact on cost of sales for restating, where applicable, the cost of concentrate purchases from affiliated suppliers to the equivalent prices paid to unaffiliated suppliers.
- Volumes, grades and net prices of concentrate purchases from unaffiliated and affiliated suppliers by type of concentrate purchased.
- Volumes, grades and net prices associated with toll concentrates processed by type of concentrate.

Line 07—Other Materials Costs. Report annual costs incurred for flux, refractories, coke and other materials used by the smelter in its processing of concentrates. Materials purchased from unaffiliated suppliers should be valued at the actual prices paid after adjustment for transportation costs incurred. Materials purchased from affiliated suppliers should be valued at or, if necessary, restated to equivalent prices quoted by unaffiliated suppliers. Include in Exhibit B supporting schedules showing the:

- Annual value of material purchases classified according to purchases from unaffiliated and affiliated suppliers.
- Cost of sales adjustments to material purchases for net annual additions to or withdrawals from material inventories, freight costs on material purchases and inventory loss.
- Impact on cost of sales for restating, where applicable, the costs of material purchases from affiliated suppliers to equivalent prices paid to unaffiliated suppliers.
- Classification of other material costs by major cost factors for each cost component that exceeds 20 percent of any line item in the cost of sales schedule.

Line 08—Production Labor Costs. Report in each column total direct labor costs incurred by the smelter for processing purchased and toll concentrates, Schedule B.1.b, Line 18. Include in Exhibit B supporting schedules showing the:

- Manhours and wage rates for major labor classifications.

• Potential impact on wage rates of provision in the smelter's current labor contracts.

• Explanation of major variances observed in direct labor costs over the five-year period as a result of factors such as strikes or new labor contracts.

Line 09—Energy Costs. Enter the totals for the five fiscal years reported in Schedule B.1.b, Line 34.

Line 10—Pollution Control Costs. Report in each column expenses incurred for operating and maintaining pollution control facilities. All by-product credits associated with pollution control facility operations should be eliminated and reported on Line 02. Depreciation and amortization charges against the smelter's pollution control facilities should be reported separately on Line 18. Attach as part of Exhibit B supporting schedules showing the:

- Major pollution control cost elements with their values classified according to direct and indirect cost factors.
- Techniques used to allocate indirect pollution control costs to major cost pools.

Line 11—Production Overhead. Report the total costs for indirect labor, indirect materials and other production overhead costs associated with the smelter for each year. Attach as part of Exhibit B a schedule showing annual overhead costs by major cost components associated with the smelter's operations. For each cost component, where appropriate, identify the quantity and unit price element of overhead costs.

Line 12—Other Production Costs. Report annual smelter overhead and other production costs not previously reported on Lines 06 through 11. By-product credits, if any, should be eliminated and reported on Line 02 as operating revenues. Attach as part of Exhibit B supporting schedules showing the:

- Major cost elements classified according to direct and indirect production costs.
- Disaggregation of major overhead cost components into their fixed and variable cost elements.
- Allocation techniques used in assigning indirect overhead costs to the major cost components.
- Elements of overhead costs represented by purchases from affiliated suppliers and adjustments, if any, required to restate these costs on the basis of equivalent prices paid to unaffiliated suppliers.

Line 13—Total Cost of Sales. Enter the total of amounts reported on Lines 06 through 12 for each year.

Line 14—Gross Operating Profit. Enter the amount reported on Line 05 minus the amount reported on Line 13 for each year.

Line 15—Selling, General & Administrative (SG&A) Expenses. Report SG&A expenses attributable to the smelter's annual operating activities. Exclude those operating costs to be reported separately on Lines 16 through 21 and those costs for which causal and beneficial relationships to the smelter cannot be established. Attach as part of Exhibit B supporting schedules (1) segregating SG&A expenses by major expense components, (2) classifying the major expense components according to those costs incurred directly by smelter operations and costs allocated to the smelter from indirect cost pools and (3) explaining the basis used for indirect cost allocations.

Line 16—Taxes, Other Than Income Tax. Report all taxes (exclusive of Federal, state, local and foreign income taxes) assignable to the smelters operations. Attach as part of Exhibit B, a schedule that (1) segregates these operating taxes by major component, (2) classifies each component according to direct and indirect cost elements, and (3) explains the basis used for indirect cost allocations.

Line 17—Exploration and Research Costs. Report exploration and research costs (exclusive of capitalized costs reported in Schedule B.2) that are assignable to the smelter's annual operations. Attach as part of Exhibit B a schedule (1) segregating exploration and research costs by major expense components, (2) classifying each expense component according to direct and indirect cost elements and (3) explaining the basis used for indirect cost allocations.

Line 18—Pollution Control Depreciation and Amortization. Report annual depreciation and amortization charges attributable to the smelter's investment in pollution control facilities and equipment. Reported charges should be computed in accordance with depreciation and amortization methods adopted for tax reporting purposes by the firm. Attach as part of Exhibit B a schedule segregating the smelter's pollution control and nonpollution control facility investments into major depreciable asset components. Describe for each asset component the (1) depreciation method adopted for tax reporting purposes, (2) annual depreciation and amortization charges by applicable fiscal year, (3) classification of annual charges into direct and indirect cost elements and (4) basis used for indirect cost allocations.

Line 19—Other Facility Depreciation and Amortization. Report annual depreciation and amortization charges (exclusive of charges reported on Line 18) assignable to the smelter's operations. Refer to Line 18 instructions for additional reporting requirements.

Line 20—Interest on Short-Term Debt. Report interest expense and associated financial charges for each year on current liabilities in accordance with the assignment instructions in Section 2.1. Do not include interest on the portion of long-term debt due within the current year for each reporting period.

Line 21—Miscellaneous Operating Expenses. Report any additional expenses assignable to the smelter's annual operations. Attach as part of Exhibit B a schedule (1) segregating these additional expenses into major expense components, (2) classifying each expense component according to costs incurred directly by the smelter and costs allocated to the smelter from indirect cost pools and (3) explaining the basis used for indirect cost allocations.

Line 22—Total Other Operating Expenses. Enter the total of amounts reported on Lines 15 through 21 for each year.

Line 23—Income from Operations. Enter the amount reported on Line 14 minus the amount reported on Line 22 for each year.

Line 24—Gain/(Loss) from Disposition of Property. Report net gains or losses recognized during each year from disposition of property, plant and equipment. Report such gains or losses in accordance with the firm's normal practice for certified financial statement reporting. If such gains or losses are not significant and are classified otherwise, no reclassification need be made. A note to this effect must be included in Exhibit B.

Line 25—Miscellaneous Income and Expenses. Report minority interest in income, foreign currency translation effects, and other non-operating income and expenses directly assignable to the smelter and not recognized elsewhere on this schedule. Report such items in accordance with the accounting methods used for certified financial reporting purposes.

Line 26—Total Other Income and Expenses. Enter the algebraic sum of amounts reported on Lines 24 through 25 for each year.

Line 27—Net Taxable Income. Enter the amount reported on Line 23 minus the amount reported on Line 26 for each year.

Supplemental Historical Revenue Data—Schedule B.1.a**General**

Report annual product sales and associated operating revenues, net of returns and allowances, from smelter sales and/or transfers of copper, lead and zinc products and tolling services to both unaffiliated and affiliated customers. Revenues from affiliated customer sales should be stated or, if necessary, restated at prices equivalent to those received on comparable sales to unaffiliated customers. Refer to the NSO Financial Reporting Overview discussion of "Transfer Prices on Affiliated Party Transactions" for instructions on the restatement of affiliated customer revenues.

Lines 01, 14 and 27—Primary Nonferrous Product Sales. Report in thousands of tons the total quantity of copper, lead and zinc products sold in each respective fiscal year.

Lines 02, 15 and 28—Unaffiliated Customer Sales. Report in thousands of tons the respective quantities of copper, lead and zinc product sales to unaffiliated customers during each fiscal year.

Lines 03, 16 and 29—Unaffiliated Customer Revenues. Report in thousands of dollars the total operating revenues derived from smelter sales of copper, lead and zinc to unaffiliated customers during each fiscal year.

Lines 04, 17 and 30—Unaffiliated Customer Prices. Report the average unit price, computed as operating revenues reported on Lines 03, 16 and 29 divided by the quantities reported on Lines 02, 15 and 28, respectively, received on smelter sales of copper, lead and zinc to unaffiliated customers during each fiscal year.

Lines 05, 18 and 31—Average Product Quality Grade. Report the average quality rating assigned to copper, lead and zinc products purchased by the smelter's unaffiliated customers.

Lines 06, 19 and 32—Affiliated Customer Sales. Report in thousands of tons the respective quantities of copper, lead and zinc product sales to affiliated customers during each fiscal year.

Lines 07, 20 and 33—Affiliated Customer Revenues. Report in thousands of dollars the total operating revenues derived from smelter sales of copper, lead and zinc to affiliated customers during each fiscal year.

Lines 08, 21 and 34—Affiliated Customer Prices. Report the average unit price, computed as operating revenues reported on Lines 07, 20 and 33 divided by the quantities reported on Lines 06, 19 and 32, respectively, received on smelter sales of copper, lead

and zinc to affiliated customers during each fiscal year.

Lines 09, 22 and 35—Average Product Quality Grade. Report the average quality rating assigned to copper, lead and zinc products purchased by the smelter's affiliated customers.

Lines 10, 23 and 36—Total Primary Product Revenues. Report total operating revenues derived from the smelter's sales to unaffiliated and affiliated customers of copper (Lines 03 + 07), lead (Lines 16 + 20) and zinc (Lines 29 + 33) during each fiscal year.

Lines 11, 24 and 37—Transfer Price Adjustments. Report operating revenue adjustments required to equate affiliated customer transfer prices with unaffiliated customer market prices on smelter sales of copper, lead and zinc during each fiscal year. Attach as part of Exhibit B an explanation of the method used for restating transfer prices where such adjustments are necessary.

Lines 12, 25 and 38—Other Revenue Adjustments. Report sales returns and allowances and other adjustments applicable to the smelter's revenues derived from copper, lead and zinc product sales. Attach as part of Exhibit B a schedule reporting the types and amounts of such adjustments.

Lines 13, 26 and 39—Adjusted Product Revenues. Enter the algebraic sums of Lines 10 through 12 for adjusted copper sales (Line 13), Lines 23 through 25 for adjusted lead sales (Line 26) and Lines 36 through 38 for adjusted zinc sales (Line 39).

Line 40—Primary Metal Revenues. Enter for each fiscal year the sum of Lines 13, 26 and 39.

Line 41—Toll Concentrates Processed. Report in thousands of tons the total quantity of toll concentrates processed during each fiscal year.

Lines 42 to 45—Unaffiliated Customer Toll Revenues. Report for each fiscal year the quantity of toll concentrates processed for unaffiliated customers (Line 42), total operating revenues derived from this processing (Line 43), average price charged per ton of concentrate processed (Line 44 = Line 43/42) and the average quality rating assigned to toll concentrates processed for unaffiliated customers (Line 45).

Lines 46 to 49—Affiliated Customer Toll Revenues. Report for each fiscal year the quantity of toll concentrates processed for affiliated customers (Line 46), total operating revenues derived from such processing (Line 47), average price charged per ton of concentrate processed (Line 48 = Line 47/46) and the average quality rating (Line 49) assigned to toll concentrates processed for affiliated customers.

Line 50—Tolling Service Revenues. Enter for each fiscal year the total of amounts reported on Lines 43 and 47.

Line 51—Transfer Price Adjustments. Report operating revenue adjustments required to equate affiliated customer transfer prices with market prices charged to unaffiliated customers on the smelter's tolling services. Attach as part of Exhibit B an explanation of the method used for restating transfer prices where such adjustments are necessary.

Line 52—Other Revenue Adjustments. Report other adjustments applicable to the smelter's tolling service revenues. Attach as part of Exhibit B a schedule reporting the types and amounts of such adjustments.

Line 53—Adjusted Tolling Service Revenues. Enter for each fiscal year the total of amounts reported on Lines 50 through 52.

Line 54—Co-Product Revenues. Report the net revenues for each year from sales of co-products derived from the smelter's operations. Attach as part of Exhibit B a schedule showing by individual type of co-product, the quantity produced and sold, market price per unit of sales and total revenues derived from the co-product sales.

Line 55—Pollution Control By-product Revenues. Report revenues from the sale of by-products derived from operation of the smelter's pollution control facilities. Attach as part of Exhibit B a schedule showing by type of by-product produced, the quantity of output, market price received per unit of output sold and total revenue derived from the by-product sales.

Line 56—Other By-product Revenues. Report revenues from the sales of gold, silver, and other by-products derived from the smelter's operations. Attach as part of Exhibit B a schedule providing additional documentation as specified in the instructions for Line 55.

Line 57—Total Co-product and By-product Revenues. Enter for each year the total of Lines 54 through 56.

Supplemental Historical Cost Data—Schedule B.1.b**General**

Report annual costs and input quantities for smelter operations by line item under each column for the years indicated by this schedule.

Line 01—Total Quantity Purchased. Report for each year the total quantity of concentrates purchased by the smelter. This will be sum of Lines 02 and 06. Do not include the quantity of toll concentrates.

Line 02—Quantity Purchased. Report for each year the total quantity of concentrates purchased from

unaffiliated suppliers by the smelter. Attach as a part of Exhibit B a description of the types and grades of these concentrates. Do not include the quantity of toll concentrates.

Line 03—Concentrate Cost. Report for each year the outlays paid to unaffiliated suppliers for concentrates. Attach as part of Exhibit B an explanation of the method or methods used in determining these outlays and relationship between concentrate prices and the types and grades of concentrates purchased from unaffiliated suppliers.

Line 04—Average Unit Price. Report for each year the average unit price paid for purchases of concentrates from unaffiliated suppliers. Generally, this value will be equivalent to Line 03 divided by Line 02. If this equivalency does not hold, attach as a part of Exhibit B an explanation of the variance.

Line 05—Average Concentrate Grade. Report for each year the average concentrate grade of concentrates purchased from unaffiliated suppliers. Attach as part of Exhibit B an explanation of this average. The average should correspond to the average price reported in Line 04.

Line 06—Quantity Purchases. Report for each year the total quantity of concentrates purchased from affiliated suppliers by the smelter. Attach as part of Exhibit B a description of the types and grades of these concentrates. Do not include the quantity of toll concentrates.

Line 07—Concentrate Cost. Report for each year the actual outlays paid to affiliated suppliers for concentrates. Attach as part of Exhibit B an explanation of the method or methods used in determining these outlays and relationship between concentrate prices and the types and grades of concentrates purchased from affiliated suppliers. Do not reflect any adjustments to market prices here.

Line 08—Average Unit Price. Report for each year the average unit price paid for purchases of concentrates from affiliated suppliers. Generally, this value will be equivalent to Line 07 divided by Line 06. If this equivalency does not hold, attach as part of Exhibit B an explanation of the variance.

Line 09—Average Concentrate Grade. Report for each year the average concentrate grade of concentrates purchased from affiliated suppliers. Attach as part of Exhibit B an explanation of this average. The average should correspond to the average price reported in Line 08.

Line 10—Total Concentrate Costs. Enter the sum of Line 03 and Line 07 for each year.

Line 11—Transfer Price Adjustments. Enter the amounts required to adjust outlays paid to affiliated suppliers to market value. Attach as part of Exhibit B a description of and the computations of any required cost adjustments.

Line 12—Other Cost Adjustments. Enter the amounts of any other cost adjustments required such as freight or allowances. Attach as part of Exhibit B the identification and the derivation of these adjustments.

Line 13—Adjusted Concentrate Cost. Enter for each year the adjusted concentrate cost reflecting the adjustments reported in Lines 11 and 12.

Line 14—Direct Labor Hours. Report for each year the quantity of direct labor hours required to support the processing levels previously reported. Attach as part of Exhibit B an explanation of the labor productivity factors involved.

Line 15—Average Hourly Wage Rate. Report for each year the average wage rate paid per unit of direct labor input. Attach as part of Exhibit B a description of direct labor cost factors under existing labor contracts and an explanation of the method or methods used to determine wage rates.

Line 16—Total Wage Payments. Enter for each year the product of Lines 14 and 15.

Line 17—Supplemental Employee Benefits. Report adjustments required to direct labor costs for other employee compensation under supplemental benefit plans. Attach as part of Exhibit B a description of such plans and their costs and an explanation of the method or methods used to determine such costs.

Line 18—Total Production Labor Cost. Enter for each year the total of Lines 16 and 17.

Lines 19, 22, 25, 28 and 31—Energy Quantities. Report for each year the quantity of energy by type required to support the processing levels reported in the smelter's revenue. Attach as part of Exhibit B, an explanation of energy use factors and qualities considered in determining the smelters energy requirements.

Lines 20, 23, 26, 29 and 32—Unit Prices. Report for each year the a price paid per unit of energy input by type of energy. Attach as part of Exhibit B, a description of the energy price factors under existing energy contracts and an explanation of the method or methods used to determine unit energy prices.

Lines 21, 24, 27, 30 and 33—Total Payments. Enter the products of quantity and prices paid for electricity (Lines 19 $\times$ 20), natural gas (Lines 22 $\times$ 23), coal (Lines 25 $\times$ 26), fuel oil (Lines 28 $\times$ 29), and other (Lines 31 $\times$ 32).

Line 34—Total Energy Costs. Enter for each year the total of Lines 21, 24, 27, 30 and 33.

Historical Capital Investment Summary—Schedule B.2

General

Report annual end-of-period asset investments and current liabilities associated during the fiscal years reported in Schedule B.1 with operation of the smelter subject to this NSO application.

The amounts assigned to the subject smelter should include both (1) investments and liabilities directly identifiable with the smelter's operating activities and (2) asset investments shared with other segments to the extent that a specific causal and beneficial relationship can be established for the inter-segment allocation of such investments. Do not allocate to the smelter the costs of assets maintained for general corporate purposes. Provide a detailed explanation of amounts classified as nontraceable on a separate schedule and attach as part of Exhibit B.

Applicants shall also restate trade receivables and payables for transfer price adjustments on the smelter's transactions with affiliated customers.

Line 01—Cash on Hand and Deposit. Report total cash balances assignable to the smelter's operations at the end of each fiscal year on the basis of causal and beneficial relationships with total corporate activities. Attach as part of Exhibit B an explanation of the basis used for allocation.

Line 02—Temporary Cash Investments. Report temporary cash investments in time deposits or other short-term securities. Include only those investments either held by the smelter to meet current-period tax payments and other budgeted expenditures specifically identifiable with the smelters continued operation. Exclude any temporary cash investments for which no specific future outlay requirement can be identified.

Attach as part of Exhibit B a schedule classifying temporary cash investments according to identifiable budgeted expenditure requirements.

Lines 03 and 04—Net Trade Receivables. Report trade accounts and notes, net of reserves for uncollectible items, assignable to the smelter in relation to its unaffiliated (Line 03) and affiliated (Line 04) customer sales and transfers. Trade receivables reported by the smelter as due from affiliated customers should be stated or, if necessary, restated on credit terms equivalent to those received by unaffiliated customers on a sale of comparable products. Attach as part of

Exhibit B a schedule showing adjustments in the smelter's receivables investments required to equate trade credit terms extended to affiliated and unaffiliated customers.

Lines 05 and 06—Inventory Investments. Report respective end-of-period investments in raw material, work-in-process and finished good inventories held to support the smelter's production and sale of products (Line 05) and associated inventories of other materials and supplies (Line 06). Inventory purchases from affiliated suppliers should be stated or, if necessary, restated at market prices prevailing on purchases from unaffiliated suppliers. Attach as part of Exhibit B a schedule (1) describing whether inventories have been valued on a last-in-first-out (LIFO), first-in-first-out (FIFO) or other cost allocation process, (2) describing the smelter's transfer pricing policies on inventory purchases from affiliated suppliers and (3) presenting adjustments required in reported inventory investments to reflect restatements of transfer prices on purchases from affiliated suppliers.

Line 07—Other Current Assets. Report prepaid expenses, deferred charges, non-trade notes and accounts receivable, and other assets classified as current for certified financial statement reporting purposes that are assignable to the smelter's operations. Attach as part of Exhibit B a schedule classifying these other current assets according to their types and amounts.

Line 08—Total Current Assets. Enter the total of amounts reported on Lines 01 through 07 for each fiscal year.

Lines 09 to 14—Property, Plant and Equipment. Report by individual line item property, plant and equipment investments assignable to smelter operations for each fiscal year. Include in gross facility investments at the end of each period both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the inter-segment allocation of such facility investments.

Attach as part of Exhibit B a schedule reporting by individual line item the annual capital expenditures on additional property, plant and equipment investments in the smelter's operations. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvement and (2) direct facility versus joint-use facility investments. Explain the method used for allocating capital expenditures on

joint-use facilities to the smelter's operations. Refer to Line 17 instructions for additional reporting requirements on the smelter's facility investments.

Line 15—Total Smelter Investment. Enter the total of amounts reported on Lines 09 through 14 for each fiscal year.

Line 16—Accumulated Depreciation and Amortization. Report accumulated depreciation, amortization and other valuation charges recorded for certified financial statement reporting purposes in relation to smelter investment as reported on Line 15. Other valuation charges are defined in Financial Accounting Standards Board (FASB) Statement No. 19 as losses recognized in connection with an impairment in the value of an unimproved property below its acquisition cost. Refer to Line 17 instructions for additional reporting requirements on smelter facility investments.

Line 17—Net Smelter Investment. Enter the amount reported on Line 15 minus the amount reported on Line 16 for each fiscal year. Attach as part of Exhibit B a schedule classifying gross facility investments, accumulated depreciation, amortization charges, and net facility investments by major pollution control and non-pollution control components. Identify for each asset component the direct versus joint-use investments assigned to the smelter and explain the basis used to allocate amounts associated with joint-use facilities to the smelter.

Line 18—Other Non-Current Assets. Report other assets assignable to the smelter's operations for each fiscal year. Attach as part of Exhibit B a schedule reporting by type and amount the major components of such investments.

Line 19—Total Smelter Capital Investment. Enter the total of amounts reported on Lines 08, 17 and 18 for each fiscal year.

Lines 20 and 21—Trade Accounts and Notes Payable. Report trade accounts and notes due on the smelter's purchases from unaffiliated suppliers (Line 20) and on its inter-segment transfers or purchases from affiliated suppliers (Line 21). Trade payables reported by the smelter as due to affiliated suppliers should be stated or, if necessary, restated on terms equivalent to those received from unaffiliated suppliers on a purchase of comparable materials. Attach as part of Exhibit B a schedule showing adjustments required on the smelter's trade payables to equate trade credit terms received from affiliated and unaffiliated suppliers.

Line 22—Other Expense Accruals. Report payments classified as current for salaries and wages, other employee

benefits, operating taxes and related operated expenses assignable to the smelter's operations during each fiscal year. Attach as part of Exhibit B a schedule classifying by type and amount the major components of such accruals.

Line 23—Current Notes Payable. Report payments due to nontrade creditors on short-term financing arrangements directly associated with the smelter's operations. Exclude current installments due on long-term debt financing arrangements, notes due to officers and directors, intersegment loans or advances and loans or advances from affiliated operating segments.

Line 24—Other Current Liabilities. Report other nontrade payables classified as current obligations assignable to the smelter's operations.

Line 25—Total Current Liabilities. Enter the total of amounts reported on Lines 20 through 24 for each fiscal year.

Line 26—Net Smelter Capital Investment. Enter the amount reported on Line 19 minus the amount reported on Line 25 for each fiscal year.

Cash Proceeds From Liquidation—Schedule B.2.a

General

Applicants should determine the current salvage value of their existing investment in the smelter as the net proceeds that could be derived through an orderly liquidation of the smelter's assets. The net cash proceeds should be reported after an appropriate allowance for disposal costs, contractual claims against the smelter (e.g., labor termination penalties), and income tax effects on the corporation of such liquidation costs.

The applicant must stipulate the most advantageous alternative market (use) for the smelter's facilities. Generally, this market will be:

- Secondary market for used plant and equipment.
- Sale for scrap.
- Abandonment where the disposal cost exceeds scrap value.

The current net salvage value should be disaggregated into the same property, plant and equipment asset groups reported under the historical capital investment summary, Schedule B.2.

Line 01—Current Assets. Enter in Columns 1 and 2, the value of total current assets shown in Line 08 of Schedule B.2 (Historical Capital Investment Summary) for 1978. No gain or loss should be reported in Columns 3 through 5 for the liquidation of current asset investments.

Lines 02–07—Property Plant and Equipment. Enter in Column 1 the

appraised liquidation value (in terms of pretax cash proceeds) of the smelter by asset group. This estimate should be certified by a qualified third party professional appraiser and shall represent the best use and highest alternative value of these assets. The liquidation value of any assets which are jointly used by the smelter and other operating segments shall be excluded if, upon closure of the smelter, such assets would continue in service for the non-smelter activity.

In Column 2, report the net book value of these assets for which liquidation values have been reported in Column 1. The reported values should correspond with amounts reported for 1978 in lines 09 through 15 in Schedule B.2 as adjusted for appropriate eliminations of joint-use facilities and reconciliation to a net book value as reported for income taxes. Attach as part of Exhibit B supporting schedules showing all adjustments and conversion of net book value as reported on the financial statements to net book value, that would be used for income tax purposes.

Compute Column 3 as Column 1 less Column 2. The gain (or loss) shown in Column 3 shall be segregated into ordinary income and capital gains components subject to taxation pursuant to applicable income tax rules. Enter ordinary income in Column 4 and capital gains in Column 5.

Line 08—Total Smelter Investment. Enter the sum of lines 02 through 07 for each of the columns.

Line 09—Other Non-current Assets. In Column 1, report the appraised value of other non-current assets in accordance with the instructions for Line 18, Schedule B.2, except that any joint asset(s) that would continue in the event of smelter liquidation shall be excluded. This estimate shall be certified by a qualified third party professional appraiser.

In Column 2, report the net book value of the non-current assets directly corresponding to those assets included in the liquidation value estimated under Column 1.

The remaining columns shall be completed in accordance with the instructions given above for Lines 02 to 06.

Line 10—Total Smelter Value. Enter the sum of Lines 01, 08 and 09.

Line 11—Total Current Liabilities. Report in both Columns 1 and 2, the value of total current liabilities shown in Line 25 of Schedule B.2 for 1978.

Line 12—Gross Liquidation Value. Line 10 less Line 11.

Line 13—Liquidation Costs. In Columns 1, 3 and 4, report the value of any liquidation costs such as labor

contract termination penalties, severance pay and related costs, associated with closure of the smelter.

Line 14—Taxable Gain (or Loss). Enter in Columns 4 and 5, the differences between Line 12 less Line 13.

Line 15—Income Tax Rate. Enter the sum of the Federal, state and local marginal tax rates of the firm for ordinary income and capital gains in columns 4 and 5, respectively. Attach as part of Exhibit B a schedule detailing the estimated marginal tax rate by taxing entity.

Line 16—Income Tax on Gain (or Loss). In Columns 4 and 5, enter the product of Line 14 multiplied by the marginal income tax rates reported in Line 15. In Column 1 enter the sum of Column 4 plus Column 5.

Line 17—After-Tax Cash Proceeds. Line 12 less Lines 13 and 16. This computation applies to Column 1 only.

Constant Controls Forecast Profit and Loss Summary—Schedule C.1

General

Report annual forecasts of operating revenues, operating costs and income taxes anticipated during calendar years 1980 through 1986 from operation of the smelter subject to this NSO application. These constant controls forecasts should be based on an assumption that the applicant immediately implements a program of additional pollution control facility investments sufficient to achieve full compliance with the smelter's SIP stack emission limitations for sulfur dioxide.

The assumed investment program should be based on whichever adequately demonstrated system, applicable to the smelter, that would be most economically beneficial subsequent to installation of the system. For this purpose, adequately demonstrated systems include the technology underlying EPA's new source performance standards for copper, lead and zinc smelters (40 CFR Part 60, Subparts P, Q and R) and the following control systems: Magnesium oxide concentration, lime/limestone scrubbing and ammonia scrubbing.

Copper smelters which will process concentrates containing an average of 1,000 pounds per hour or more of arsenic during the forecast period should assume that they will be required to use best engineering techniques to control fugitive emissions of arsenic. All smelters should assume that they will be required to install whatever technically feasible equipment is necessary to reduce their process and fugitive emissions of lead enough to achieve a concentration of 1.5 micrograms per

cubic meter (mg/m³) on a 90-day average basis in the ambient air by January 1, 1985. All smelters should also assume that they will be required to meet all other regulatory requirements in effect at the time the application is made.

Line 01—Primary Metal Sales Revenue. Enter the totals reported in Schedule C.1.a, Line 40.

Line 02—Co-product and By-product Sales Revenue. Enter the totals reported in Schedule C.1.a, Line 57.

Line 03—Tolling Service Revenues. Enter the totals reported in Schedule C.1.a, Line 53.

Line 04—Other Operating Revenues. Report operating revenues anticipated from sources not accounted for under Lines 01 through 03. Refer to instructions for Line 04 in Schedule B.1 for items that should not be included in "other" operating revenues. Attach as part of Exhibit B a schedule showing annual amounts forecasted by individual revenue component for "other" operating revenues associated with the smelter's forecast constant controls operations. Identify in the supporting schedule any differences in the "other" revenue components reported in Schedules B.1 and C.1 and explain the reasons for such differences.

Line 05—Total Operating Revenues. Report the total of amounts reported under Lines 01 through 04.

Line 06—Concentrate Costs. Enter the totals reported in Schedule C.1.b, Line 13.

Line 07—Other Material Costs. Report total costs forecasted for flux, refractories, coke and other materials directly associated with the smelter's processing of concentrates. Attach as part of Exhibit B a schedule showing the annual amounts forecasted by major material cost components. For each cost component, identify the forecasted quantity and unit price elements of material cost and explain the basis for forecasting these quantity and price elements. Identify in the supporting schedule any differences in the "other" material cost components shown in Schedules B.1 and C.1 and explain the reasons for such differences.

Line 08—Production Labor Costs. Enter the totals reported for the years 1980 through 1986 in Schedule C.1.b, Line 18.

Line 09—Energy Costs. Enter the totals reported for the years 1980 through 1986 in Schedule C.1.b, Line 34.

Line 10—Pollution Control Costs. Report the total costs forecasted for expenses identifiable with operation and maintenance of the additional pollution control equipment and facilities to achieve constant controls.

By-product credits associated with operation of the pollution control facilities should be eliminated from the cost accounts and reclassified to Schedule C.1.a, Line 55. Attach a schedule as part of Exhibit B classifying pollution control costs by major cost components. Explain the basis used for estimating each of the cost components.

Line 11—Production Overhead Costs. Report the total costs forecasted for indirect labor, indirect materials and other production overhead costs associated with the smelter's constant controls forecasts. Attach as part of Exhibit B a schedule showing annual overhead costs projected by major cost components associated with the smelter's operations. For each cost component, where appropriate, identify the forecasted quantity and unit price elements of overhead costs and explain the basis for estimating these quantity and price elements. Also identify in the supporting schedule any differences in production overhead cost classifications used in Schedules B.1 and C.1 and explain the reasons for such differences.

Line 12—Other Production Costs. Report other forecasted production costs not previously reported on Lines 06 through 11. Attach as part of Exhibit B supporting schedules showing the basis of the forecasts.

Line 13—Total Cost of Sales. Report the sum of operating costs reported on Lines 06 through 12.

Line 14—Gross Operating Profit. Report the difference between Line 05 minus Line 13.

Line 15—Selling, General and Administrative Expenses. Report the total costs forecasted for administrative, marketing and general corporate overhead functions that directly or indirectly support the smelter's operations. Refer to the NSO Financial Reporting Overview for a general discussion of indirect cost allocations from overhead cost pools. Attach as part of Exhibit B a schedule classifying selling, general and administrative expenses into major cost components. Indicate whether each component represents costs directly assignable to the smelter or indirect costs allocated from other business segments to the smelter. Explain the basis used for estimating the amount of expected costs included in each component and the basis used for allocating indirect cost elements to the smelter. Identify and explain any differences in the selling, general and administrative cost classification used in Schedules B.1 and C.1.

Line 16—Taxes, Other than Income Taxes. Report the total costs forecasted for property taxes and associated levies

paid to governmental units by or for the benefit of the firm's smelter operations. Attach as part of Exhibit B a schedule classifying operating taxes by major cost components. Indicate whether each cost component represents costs directly assignable to the smelter or indirect costs allocated from overhead cost pools. Explain the basis used for estimating the costs included in each component and the basis for allocating indirect taxes to the smelter. Identify and explain any differences in the component classifications used in Schedules B.1 and C.1.

Line 17—Exploration and Research Costs. Report the total estimates of costs incurred directly by or for the benefit of the smelter operations. Attach as part of Exhibit B a schedule classifying the costs by major direct and indirect cost components. Explain the basis for estimating the costs assigned to each component. Identify and explain any differences in pro forma versus historical cost classifications used in Schedules B.1 and C.1.

Line 18—Pollution Control Facility Depreciation and Amortization. Report the estimates of depreciation and amortization charges associated with the smelter's forecasted investment in constant controls pollution control equipment and facilities. Attach as part of Exhibit B supporting schedules classifying pollution control facilities by major assets or asset groups. For each facility component, indicate the depreciation or amortization method that would be reported for tax purposes. Based on that method, report the original cost of the component assets, un depreciated balance of the component assets, the remaining depreciable life and the annual depreciation or amortization charge. Indicate for each asset component whether the depreciation and amortization charges represent direct cost assignments or indirect cost allocations to the smelter.

Line 19—Other Smelter Facility Depreciation and Amortization. Report the pro forma estimates of depreciation and amortization charges associated with the smelter's investment in equipment and facilities other than those classified as pollution control facilities. Attach as part of Exhibit B supporting schedules prepared according to the instructions for Line 18 above.

Line 20—Interest on Short-Term Debt. Report the estimates of interest and other financing charges on forecasted short-term obligations as classified in the smelter's current liabilities on Schedule B.2. Interest and associated financing charges on long-term debt should not be included as an expense

identifiable with the smelter's operations. Attach as part of Exhibit B a schedule showing the interest-bearing, short-term debt contracts identifiable with the smelter's operations, the interest rate projected for these contracts and the estimated annual interest charges. Identify and explain any differences in the forecasted versus historical classification in Schedules B.1 and C.1 of short-term debt contracts identifiable with the smelter operations.

Line 21—Miscellaneous Operating Expenses. Report only the total operating expenses associated with or allocated to the smelter that cannot be appropriately classified in one of the preceding line items. Attach as part of Exhibit B a schedule showing the classification of these residual operating expenses into major cost components. Explain the basis used for forecasting the cost under each component. Identify each cost component in terms of direct or indirect cost and explain the basis used for allocating the indirect costs to smelter operations. Identify and explain any differences in the forecasted versus historical cost classifications included in Schedules B.1 and C.1.

Line 22—Total Other Operating Expenses. Enter the sum of operating costs reported on Lines 15 through 21.

Line 23—Income From Operations. Report the balance obtained by subtracting Line 22 from Line 14.

Line 24—Income Taxes. Multiply income from operations by the sum of the Federal, state and local marginal tax rates. Attach as part of Exhibit B a schedule detailing the estimated marginal tax rate by taxing entity.

Line 25—Net Income from Operations. Report the balance obtained by subtracting Line 24 from Line 23.

Supplemental Constant Controls Revenue Data—Schedule C.1.a

General

Report forecasts detail of annual indicated operating revenue factors anticipated during the years 1980 through 1986 from operation of the smelter subject to this NSO application. These details shall support the summary revenue forecasts reported on Schedule C.1. Report forecasted information required for each item in a manner consistent with the instructions for Schedule B.1.a. Attach as part of Exhibit B schedules to (1) explain the methods used to make the required forecasts, (2) explain differences, if any, between historical trends and the forecasts and (3) data and information to support the forecasts. The forecast revenue total in Schedule C.1.a shall correspond to those reported on Schedule C.1.

Supplemental Constant Controls Cost Data—Schedule C.1.b**General**

Report forecasts of annual indicated operating cost factors anticipated during the years 1980 through 1986 from operation of the smelter subject to this NSO application. These details shall support the summary cost forecasts on Schedule C.1. Report forecasted information required for each item in a manner consistent with the instructions for Schedule B.1.b. Attach as part of Exhibit B schedules to (1) explain the methods used to make the required forecasts, (2) explain differences, if any, between historical trends and the forecasts and (3) data information to support the forecasts. The forecast cost totals in Schedule C.1.b shall correspond to those reported on Schedule C.1.

Constant Controls Sustaining Capital Investment Summary—Schedule C.2**General**

The applicant should estimate and report, in Schedule C.2, yearly sustaining capital outlays for maintenance of the smelter's existing productive capability. These estimates should be forecast under the assumption that full compliance with SIP emission limitations for SO₂ will be achieved. Major elements of these outlays should be disclosed, as well as the total of such outlays. Estimates shall be restricted to those items which will be capitalized for tax purposes. These outlays shall primarily be for plant replacement, although outlays for improvements and expansion may be included to the extent that improvements and/or expansion, exclusive of required pollution control outlays, can be justified as economically feasible. Estimates of sustaining capital shall exclude any incremental investment for constant control requirements. Sustaining capital investments in facilities shared with other operating segments shall be allocated in accordance with the instructions given below.

Estimates of sustaining capital shall be compatible with productive capacity and pollution control requirements underlying the operating revenue and cost forecasts incorporated in Schedule C.1.

Lines 01 to 06—Sustaining Capital. Report by individual line item property, plant and equipment sustaining capital investments assignable to smelter operations for each fiscal year. Include

both (1) property, plant and equipment directly associated with the smelter's operations and (2) facilities shared with other operating segments to the extent that a causal and beneficial relationship can be established for the intersegment allocation of such facility investments.

Attach as part of Exhibit B a schedule disclosing by individual line item the major elements of annual capital expenditures for sustaining capital. Further classify these annual capital expenditures into both (1) investments required to maintain the smelter versus investments in smelter expansion and improvements and (2) direct facility versus joint-use facility investments. Explain the method used for allocating capital expenditures on joint-use facilities to the smelter's operations.

Line 07—Total Smelter Sustaining Capital. Enter the total of amounts reported on Lines 01 through 06 for each fiscal year. Transfer the reported total for each year to Schedule A.1, Line 03.

Interim Controls Forecast Profit and Loss Summary—Schedule D.1**General**

Report annual forecasts of operating revenues, operating costs and income taxes for the years 1980 through 1986 from operation of the smelter, subject to this controls waiver application. These interim controls forecasts should be based on an assumption that the applicant immediately implements a program of interim controls.

The assumed investment program should be based on the installation and operation of a well-designed double-absorption sulfuric acid plant to treat all strong gas streams. The interim controls projection may, but need not, account for other regulatory requirements on the same basis as for other applicants. If this is done, however, it should be assumed that the SO₂ controls are also in an interim controls configuration.

Report forecasted information required by each individual line item in a manner consistent with the instructions for Schedule C.1. Attach as part of Exhibit B supporting schedules describing and explaining any differences between Schedule B.1 and the estimates reported in Schedule D.1. Transfer the appropriate amounts reported for each year from this Schedule to Schedule A.2.

Supplemental Interim Controls Revenue Data—Schedule D.1.a**General**

Report forecasted revenue information for each line item in a manner consistent with the instructions for Schedules B.1.a and C.1.a.

Supplemental Interim Controls Cost Data—Schedule D.1.b**General**

Report forecasted cost information for each line item in a manner consistent with the instructions for Schedules B.1.g and C.1.b.

Interim Controls Sustaining Capital Investment Summary—Schedule D.2**General**

The applicant should estimate and report in Schedule D.2 yearly sustaining capital outlays compatible with productive capacity and control requirements underlying the revenue and cost forecasts reported on Schedule D.1. Report forecasted sustaining capital outlays for each line item in a manner consistent with the instructions for Schedule C.2.

EPA

Environmental Protection Agency**Primary Nonferrous Smelter Order Application****Part I—IDENTIFICATION INFORMATION**

1. Firm name _____
2. Street/Box/RFD _____
3. City _____
4. State _____
5. Zip Code _____
6. IRS Employer Identification No. _____
7. SEC 1934 Act Registration Number _____
8. Smelter Idem. _____
9. Street/Box/RFD _____
10. City _____
11. State _____
12. Zip Code _____
13. Contact Person _____
14. Title _____
15. Street/Box/RFD _____
16. Telephone _____
17. City _____
18. State _____
19. Zip Code _____

Part II—CERTIFICATION

I certify that the information provided herein and appended hereto is true and accurate to the best of my knowledge. I understand that this information is being required, in part, under the authority of Section 114 of the Clean Air Act, 42 U.S.C. 7414.

Name _____
 Title _____
 Signature _____
 Date _____

Schedule A.1.—Constant Controls Forecast Summary
[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986	Total
A. Operating cash flow projection:								
1. Net income from operation.....01								XXXXX
2. Capital expenditure projections:								
a. Constant controls.....02								XXXXX
b. Sustaining capital.....03								XXXXX
c. Total.....04								XXXXX
3. Adjusted cash flow projections.....05								XXXXX
4. Discount factors.....06								XXXXX
5. Present value of future cash flows.....07								XXXXX
B. Net present value:								
1. Terminal value.....08								
2. Discount factor.....09								
3. Present value of terminal salvage value.....10								
4. Present value of future adjusted cash flows.....11								
5. Total present value.....12								
6. Current salvage value.....13								
7. Net present value.....14								

Schedule A.2.—Interim Controls Forecast Summary
[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986	Total
A. Gross operating profit.....01								XXXXX
B. Operating cash flow projection:								
1. Net income from operations.....02								XXXXX
2. Depreciation and amortization:								
a. Pollution control facilities.....03								XXXXX
b. Other smelter facilities.....04								XXXXX
3. Operating cash flow.....05								XXXXX
4. Capital expenditure projections:								
a. Interim controls.....06								XXXXX
b. Sustaining capital.....07								XXXXX
c. Total.....08								XXXXX
5. Net cash flow projections.....09								XXXXX
6. Discount factors.....10								XXXXX
7. Present value of future cash flow.....11								XXXXX
C. Net present value:								
1. Terminal value.....12								
2. Discount factor.....13								
3. Present value of terminal salvage value.....14								
4. Present value of future cash flows.....15								
5. Total present value.....16								
6. Current salvage value.....17								
7. Net present value.....18								

Schedule B.1.—Historical Profit and Loss Summary
[Smelter Identification]

	1975	1976	1977	1978	1979
A. Operating revenues:					
1. Primary metal sales.....01					
2. Coproduct and byproduct sales.....02					
3. Tolling service revenues.....03					
4. Other operating revenues.....04					
5. Total operating revenues.....05					
B. Cost of sales:					
1. Concentrates processed.....06					
2. Other materials.....07					
3. Production labor.....08					
4. Energy costs.....09					
5. Pollution control cost.....10					
6. Production overhead.....11					
7. Other production costs.....12					
8. Total cost of sales.....13					
C. Gross operating profit.....14					
D. Other operating expenses:					
1. Selling, general and administrative.....15					
2. Taxes, other than income tax.....16					
3. Exploration and research costs.....17					
4. Depreciation and amortization:					
a. Pollution control facilities.....18					
b. Other smelter facilities.....19					
5. Interest on short term debt.....20					
6. Miscellaneous operating expenses.....21					
7. Total other operating expenses.....22					
E. Income from operations.....23					
F. Other income and (expense):					
1. Gain/(loss) on disposition of property.....24					
2. Miscellaneous other income and (expense).....25					
3. Total other income and (expense).....26					
G. Net taxable income.....27					

Schedule B.1.a.—Supplemental Historical Revenue Data

[Segment Identification]

	1975	1976	1977	1978	1979
A. Copper product sales:					
1. Total quantity sold.....	01				
2. Unaffiliated customer sales:					
a. Quantity sold.....	02				
b. Operating revenue.....	03				
c. Average unit price.....	04				
d. Average product grade.....	05				
3. Affiliated customer sales:					
a. Quantity sold.....	06				
b. Operating revenue.....	07				
c. Average unit price.....	08				
d. Average product grade.....	09				
4. Adjusted copper revenues:					
a. Total copper revenues.....	10				
b. Transfer price adjustment.....	11				
c. Other revenue adjustments.....	12				
d. Adjusted copper revenues.....	13				
B. Lead product sales:					
1. Total quantity sold.....	14				
2. Unaffiliated customer sales:					
a. Quantity sold.....	15				
b. Operating revenue.....	16				
c. Average unit price.....	17				
d. Average product grade.....	18				
3. Affiliated customer sales:					
a. Quantity sold.....	19				
b. Operating revenue.....	20				
c. Average unit price.....	21				
d. Average product grade.....	22				
4. Adjusted lead revenues:					
a. Total lead revenues.....	23				
b. Transfer price adjustment.....	24				
c. Other revenue adjustments.....	25				
d. Adjusted lead revenues.....	26				
C. Zinc product sales:					
1. Total quantity sold.....	27				
2. Unaffiliated customer sales:					
a. Quantity sold.....	28				
b. Operating revenue.....	29				
c. Average unit price.....	30				
d. Average product grade.....	31				
3. Affiliated customer sales:					
a. Quantity sold.....	32				
b. Operating revenue.....	33				
c. Average unit price.....	34				
d. Average product grade.....	35				
4. Adjusted zinc revenue:					
a. Total zinc revenues.....	36				
b. Transfer price adjustment.....	37				
c. Other revenue adjustments.....	38				
d. Adjusted zinc revenues.....	39				
D. Primary metal revenues.....	40				
E. Tolling service revenues:					
1. Total toll concentrates processed.....	41				
2. Unaffiliated customer revenues:					
a. Concentrates processed.....	42				
b. Operating revenue.....	43				
c. Average unit price.....	44				
d. Average product grade.....	45				
3. Affiliated customer revenues:					
a. Concentrates processed.....	46				
b. Operating revenue.....	47				
c. Average unit price.....	48				
d. Average product grade.....	49				
4. Adjusted tolling service revenues:					
a. Total tolling service revenue.....	50				
b. Transfer price adjustment.....	51				
c. Other revenue adjustments.....	52				
d. Adjusted tolling service revenues.....	53				
F. Coproduct and byproduct sales:					
1. Total coproduct revenues.....	54				
2. Total byproduct revenues:					
a. Pollution control facilities.....	55				
b. Other smelter processing.....	56				
3. Total coproduct and byproduct revenues.....	57				

Schedule B.1.b.—Supplemental Historical Cost Data

[Smelter Identification]

	1975	1976	1977	1978	1979
A. Concentrate costs:					
1. Total quantity purchased.....	01				
2. Unaffiliated purchases:					
a. Quantity purchased.....	02				
b. Concentrate cost.....	03				
c. Average unit price.....	04				
d. Average concentrate grade.....	05				

Schedule B.1.b.—Supplemental Historical Cost Data—Continued

[Smelter Identification]

	1975	1976	1977	1978	1979
3. Affiliated purchases:					
a. Quantity purchased.....	06				
b. Concentrate cost.....	07				
c. Average unit price.....	08				
d. Average concentrate grade.....	09				
4. Adjusted concentrate costs:					
a. Total concentrate costs.....	10				
b. Transfer price adjustment.....	11				
c. Other cost adjustments.....	12				
d. Adjusted concentrate cost.....	13				
B. Production labor cost:					
1. Direct labor hours.....	14				
2. Average hourly wage rate.....	15				
3. Total wage payments.....	16				
4. Supplemental employee benefits.....	17				
5. Total production labor cost.....	18				
6. Affiliated customer revenues.....					
C. Energy costs:					
1. Electricity:					
a. Quantity in kilowatt hours.....	19				
b. Price per kWh.....	20				
c. Total electricity payments.....	21				
2. Natural gas:					
a. Quantity in mcf.....	22				
b. Price per mcf.....	23				
c. Total natural gas payments.....	24				
3. Coal:					
a. Quantity per tons.....	25				
b. Price per ton.....	26				
c. Total coal payments.....	27				
4. Fuel oil:					
a. Quantity in gallons.....	28				
b. Price per gallon.....	29				
c. Total fuel oil payments.....	30				
5. Other (specify):					
a. Quantity (specific units).....	31				
b. Price per unit.....	32				
c. Total payments.....	33				
6. Total energy costs.....	34				

Schedule A.—Constant Controls Forecast Summary

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986	Total
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Schedule B.2.—Historical Capital Investment Summary

[Smelter Identification]

	1975	1976	1977	1978	1979
A. Current assets:					
1. Cash on hand and deposit.....	01				
2. Temporary cash investments.....	02				
3. Trade receivables, net.....					
a. Unaffiliated customers.....	03				
b. Affiliated customers.....	04				
4. Inventories.....					
a. Raw materials and products.....	05				
b. Other materials and supplies.....	06				
5. Other current assets.....	07				
6. Total current assets.....	08				
B. Property, plant and equipment:					
1. Land.....	09				
2. Buildings and improvements.....	10				
3. Machinery and equipment.....	11				
4. Transportation equipment.....	12				
5. Pollution control facilities.....	13				
6. Other fixed assets.....	14				
7. Total smelter investment.....	15				
8. Less: Accumulated depreciation and amortization.....	16				
9. Net smelter investment.....	17				
C. Other noncurrent assets.....	18				
D. Total smelter capital investment.....	19				
E. Current liabilities:					
1. Trade accounts and notes payable.....					
a. Unaffiliated suppliers.....	20				
b. Affiliated suppliers.....	21				
2. Other expense accruals.....	22				
3. Notes payable, current.....	23				
4. Other current liabilities.....	24				
5. Total current liabilities.....	25				
G. Net smelter capital investment.....	26				

Schedule B.2.a.—Cash Proceeds From Liquidation

[Smelter Identification]

		(1) Estimated liquidation value	(2) Reported net book value	(3) Total gain (loss)	(4) Gain (loss) subject to taxation as—	
					Ordinary income	Capital gain
A. Total current assets	01			XXXXX	XXXXX	XXXXX
B. Property, plant and equipment:						
1. Land	02					
2. Buildings and improvements	03					
3. Machinery and equipment	04					
4. Transportation equipment	05					
5. Pollution control facilities	06					
6. Other fixed assets	07					
7. Total	08					
C. Other Noncurrent assets	09					
D. Total smelter value	10					
E. Total current liabilities	11			XXXXX	XXXXX	XXXXX
F. Gross liquidation value	12					
G. Liquidation costs	13		XXXXX			XXXXX
H. Net Taxable Gain (or loss)	14	XXXXX	XXXXX	XXXXX		
I. Income tax rate	15	XXXXX	XXXXX	XXXXX		
J. Income tax on gain (loss)	16		XXXXX	XXXXX		
K. After tax cash proceeds from liquidation	17		XXXXX	XXXXX	XXXXX	XXXXX

Schedule C.1.—Constant Controls Forecast Profit and Loss Summary

[Smelter Identification]

		1980	1981	1982	1983	1984	1985	1986
A. Operating revenues:								
1. Primary metal sales	01							
2. Coproduct and byproduct sales	02							
3. Tolling service revenues	03							
4. Other operating revenues	04							
5. Total operating revenues	05							
B. Cost of sales:								
1. Concentrates	06							
2. Other materials	07							
3. Production labor	08							
4. Energy costs	09							
5. Production overhead	10							
6. Pollution control costs	11							
7. Other production costs	12							
8. Total cost of sales	13							
C. Gross Operating Profit	14							
D. Other operating expenses:								
1. Selling, general and administrative	15							
2. Taxes, other than income	16							
3. Exploration and research costs	17							
4. Depreciation and amortization								
a. Pollution control facilities	18							
b. Other smelter facilities	19							
5. Interest on short-term debt	20							
6. Miscellaneous operating expenses	21							
7. Total other operating expenses	22							
E. Income from operations	23							
F. Income taxes	24							
G. Net income from operations	25							

Schedule C.1.a.—Supplemental Constant Controls Revenue Data

[Smelter Identification]

		1980	1981	1982	1983	1984	1985	1986
A. Forecasted copper product sales:								
1. Total quantity sold	01							
2. Unaffiliated customer sales:								
a. Quantity sold	02							
b. Operating revenue	03							
c. Average unit price	04							
d. Average product grade	05							
3. Affiliated customer sales:								
a. Quantity sold	06							
b. Operating revenue	07							
c. Average unit price	08							
d. Average product grade	09							
4. Adjusted copper revenues:								
a. Total copper revenues	10							
b. Transfer price adjustment	11							
c. Other revenue adjustments	12							
d. Adjusted copper revenues	13							

Schedule C.1.a.—Supplemental Constant Controls Revenue Data—Continued

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986
B. Forecasted lead product sales:							
1. Total quantity sold.....	14						
2. Unaffiliated customer sales:							
a. Quantity sold.....	15						
b. Operating revenue.....	16						
c. Average unit price.....	17						
d. Average product grade.....	18						
3. Affiliated customer sales:							
a. Quantity sold.....	19						
b. Operating revenue.....	20						
c. Average unit price.....	21						
d. Average product grade.....	22						
4. Adjusted lead revenues:							
a. Total lead revenues.....	23						
b. Transfer price adjustments.....	24						
c. Other revenue adjustments.....	25						
d. Adjusted lead revenues.....	26						
C. Forecasted zinc product sales:							
1. Total quantity sold.....	27						
2. Unaffiliated Customer sales:							
a. Quantity sold.....	28						
b. Operating revenue.....	29						
c. Average unit price.....	30						
d. Average product grade.....	31						
3. Affiliated customer sales:							
a. Quantity sold.....	32						
b. Operating revenue.....	33						
c. Average unit price.....	34						
d. Average product grade.....	35						
4. Adjusted zinc revenue:							
a. Total zinc revenues.....	36						
b. Transfer price adjustment.....	37						
c. Other revenue adjustments.....	38						
d. Adjusted zinc revenues.....	39						
D. Forecasted primary metal revenues							
E. Forecasted tolling service revenues:							
1. Total toll concentrates processed.....	40						
2. Unaffiliated customer revenues:							
a. Concentrates processed.....	41						
b. Operating revenue.....	42						
c. Average unit price.....	43						
d. Average product grade.....	44						
3. Affiliated customer revenues:							
a. Concentrates processed.....	45						
b. Operating revenue.....	46						
c. Average unit price.....	47						
d. Average product grade.....	48						
4. Adjusted tolling service revenues:							
a. Total tolling service revenues.....	49						
b. Transfer price adjustments.....	50						
c. Other revenue adjustments.....	51						
d. Adjusted tolling service revenue.....	52						
F. Co-product and by-product sales:							
1. Total co-product revenues.....	55						
2. Total by-product revenues from:							
a. Pollution control facilities.....	56						
b. Other smelter processing.....	57						
3. Total co-product and byproduct revenues.....	58						

Schedule C.1.b.—Supplemental Constant Controls Revenue Data

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986
A. Forecasted concentrate costs:							
1. Total quantity purchased.....	01						
2. Unaffiliated purchases:							
a. Quantity purchased.....	02						
b. Concentrate cost.....	03						
c. Average unit price.....	04						
d. Average concentrate grade.....	05						
3. Affiliated purchases:							
a. Quantity purchased.....	06						
b. Concentrate cost.....	07						
c. Average unit price.....	08						
d. Average concentrate grade.....	09						
4. Adjusted concentrate costs:							
a. Total concentrate costs.....	10						
b. Transfer price adjustment.....	11						
c. Other cost adjustments.....	12						
d. Adjusted concentrate cost.....	13						
B. Forecasted production labor cost:							
1. Direct labor hours.....	14						
2. Average hourly wage rate.....	15						
3. Total wage payments.....	16						
4. Supplemental employee benefits.....	17						
5. Total production labor cost.....	18						

Schedule C.1.b.—Supplemental Constant Controls Revenue Data—Continued

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986
C. Forecasted Energy Costs:							
1. Electricity:							
a. Quantity in kilowatt hours.....	19						
b. Price per kwh.....	20						
c. Total electricity payments.....	21						
2. Natural gas:							
a. Quantity in mcf.....	22						
b. Price per mcf.....	23						
c. Total natural gas payments.....	24						
3. Coal:							
a. Quantity per tons.....	25						
b. Price per ton.....	26						
c. Total coal payments.....	27						
4. Fuel oil:							
a. Quantity in gallons.....	28						
b. Price per gallon.....	29						
c. Total fuel oil payments.....	30						
5. Other (specify):							
a. Quantity (specific units).....	31						
b. Price per unit.....	32						
c. Total payments.....	33						
6. Total energy costs.....	34						

Schedule C.2.—Constant Controls Sustaining Capital Investment Summary

[Smelter Identification]

Sustaining capital	1980	1981	1982	1983	1984	1985	1986
1. Land.....	01						
2. Buildings and improvements.....	02						
3. Machinery and equipment.....	03						
4. Transportation equipment.....	04						
5. Pollution control facilities.....	05						
6. Other fixed assets.....	06						
7. Total smelter sustaining capital.....	07						

Schedule D.1.—Interim Controls Forecast Profit and Loss Summary

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986
A. Operating revenues:							
1. Primary metal sales.....	01						
2. Co-product and by-product sales.....	02						
3. Tolling service revenues.....	03						
4. Other operating revenues.....	04						
5. Total operating revenues.....	05						
B. Cost of sales:							
1. Concentrates.....	06						
2. Other materials.....	07						
3. Production labor.....	08						
4. Energy costs.....	09						
5. Pollution control costs.....	10						
6. Production overhead.....	11						
7. Other production costs.....	12						
8. Total cost of sales.....	13						
C. Gross operating profit.....	14						
D. Other operating expenses:							
1. Selling, general and administrative.....	15						
2. Taxes, other than income tax.....	16						
3. Exploration and research costs.....	17						
4. Depreciation and amortization:							
a. Pollution control facilities.....	18						
b. Other smelter facilities.....	19						
5. Interest on short-term debt.....	20						
6. Miscellaneous operating expenses.....	21						
7. Total other operating expenses.....	22						
E. Income from operations.....	23						
F. Income taxes.....	24						
G. Net income from operations.....	25						

Schedule D.1.a.—Supplemental Constant Controls Revenue Data

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986
A. Forecasted copper product sales:							
1. Total Quantity Sold.....	01						
2. Unaffiliated customer sales:							
a. Quantity sold.....	02						
b. Operating revenue.....	03						

Schedule D.1.a.—Supplemental Constant Controls Revenue Data—Continued

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986
c. Average unit price.....	.04						
d. Average product grade.....	.05						
3. Affiliated customer sales:							
a. Quantity sold.....	.06						
b. Operating revenue.....	.07						
c. Average unit price.....	.08						
d. Average product grade.....	.09						
4. Adjusted copper revenues:							
a. Total copper revenues.....	.10						
b. Transfer price adjustment.....	.11						
c. Other revenue adjustments.....	.12						
d. Adjusted copper revenues.....	.13						
B. Forecasted lead product sales:							
1. Total quantity sold.....	.14						
2. Unaffiliated customer sales:							
a. Quantity sold.....	.15						
b. Operating revenue.....	.16						
c. Average unit price.....	.17						
d. Average product grade.....	.18						
3. Affiliated customer sales:							
a. Quantity sold.....	.19						
b. Operating revenue.....	.20						
c. Average unit price.....	.21						
d. Average product grade.....	.22						
4. Adjusted lead revenues:							
a. Total lead revenues.....	.23						
b. Transfer price adjustments.....	.24						
c. Other revenue adjustments.....	.25						
d. Adjusted lead revenues.....	.26						
C. Forecasted zinc product sales:							
1. Total quantity sold.....	.27						
2. Unaffiliated customer sales:							
a. Quantity sold.....	.28						
b. Operating revenue.....	.29						
c. Average unit price.....	.30						
d. Average product grade.....	.31						
3. Affiliated customer sales:							
a. Quantity sold.....	.32						
b. Operating revenue.....	.33						
c. Average unit price.....	.34						
d. Average product grade.....	.35						
4. Adjusted zinc revenue:							
a. Total zinc revenues.....	.36						
b. Transfer price adjustment.....	.37						
c. Other revenue adjustments.....	.38						
d. Adjusted zinc revenues.....	.39						
D. Forecasted primary metal revenues.....	.40						
E. Forecasted tolling services revenues:							
1. Total toll concentrates processed.....	.41						
2. Unaffiliated customer revenues:							
a. Concentrates processed.....	.42						
b. Operating revenue.....	.43						
c. Average unit price.....	.44						
d. Average product grade.....	.45						
3. Affiliated customer revenues:							
a. Concentrates processed.....	.46						
b. Operating revenue.....	.47						
c. Average unit price.....	.48						
d. Average product grade.....	.49						
4. Adjusted tolling service revenues:							
a. Total tolling service revenue.....	.50						
b. Transfer price adjustment.....	.51						
c. Other revenue adjustments.....	.52						
d. Adjusted tolling service revenues.....	.53						
F. Co-product and by-product sales:							
1. Total coproduct revenues.....	.54						
2. Total byproduct revenues from:							
a. Pollution control facilities.....	.55						
b. Other smelter processing.....	.56						
3. Total coproduct and byproduct revenues.....	.57						

Schedule D.1.b.—Supplemental Constant Controls Revenue Data

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986
A. Forecasted concentrate costs:							
1. Total quantity purchased.....	.01						
2. Unaffiliated purchases:							
a. Quantity purchased.....	.02						
b. Concentrate cost.....	.03						
c. Average unit price.....	.04						
d. Average concentrate grade.....	.05						
3. Affiliated purchases:							
a. Quantity purchased.....	.06						
b. Concentrate cost.....	.07						
c. Average unit price.....	.08						
d. Average concentrate grade.....	.09						

Schedule D.1.b.—Supplemental Constant Controls Revenue Data—Continued

[Smelter Identification]

	1980	1981	1982	1983	1984	1985	1986
4. Adjusted concentrate costs:							
a. Total concentrate costs	10						
b. Transfer price adjustment	11						
c. Other cost adjustments	12						
d. Adjusted concentrate cost	13						
5. Forecasted production labor cost:							
1. Direct Labor Hours	14						
2. Average Hourly Wage Rate	15						
3. Total Wage Payments	16						
4. Supplemental Employee Benefits	17						
5. Total Production Labor Cost	18						
6. Forecasted energy costs:							
1. Electricity:							
a. Quantity in kilowatt hours	19						
b. Price per kwh	20						
c. Total electricity payments	21						
2. Natural gas:							
a. Quantity in mcf	22						
b. Price per mcf	23						
c. Total natural gas payments	24						
3. Coal:							
a. Quantity per tons	25						
b. Price per ton	26						
c. Total coal payments	27						
4. Fuel oil:							
a. Quantity in gallons	28						
b. Price per gallon	29						
c. Total fuel oil payments	30						
5. Other (specify):							
a. Quantity (specific units)	31						
b. Price per unit	32						
c. Total payments	33						
6. Total energy costs	34						

Schedule D.2.—Constant Controls Sustaining Capital Investment Summary

[Smelter Identification]

Sustaining capital	1980	1981	1982	1983	1984	1985	1986
1. Land	01						
2. Buildings and improvements	02						
3. Machinery and equipment	03						
4. Transportation equipment	04						
5. Pollution control facilities	05						
6. Other fixed assets	06						
7. Total smelter sustaining capital	07						

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Federal Register

Tuesday
June 24, 1980

Part IV

Department of Education

National Direct Student Loan; College
Work-Study; Supplemental Educational
Opportunity Grant; Guaranteed Student
Loan; and Basic Educational Opportunity
Grant Programs; Student Assistance
General Provisions

DEPARTMENT OF EDUCATION

45 CFR Parts 168, 174, 175, 176, 177, and 190

Student Assistance General Provisions; National Direct Student Loan Program; College Work-Study Program; Supplemental Educational Opportunity Grant Program; Guaranteed Student Loan Program; and Basic Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: These regulations modify regulations published in 1979 which implement part A, subparts 1 and 2, and parts B, C, E, and F of Title IV of the Higher Education Act of 1965, as amended. They govern the operation of the National Direct Student Loan, College Work-Study, Supplemental Educational Opportunity Grant, Guaranteed Student Loan, and Basic Educational Opportunity Grant programs.

The modifications in the regulations for these programs are intended to alleviate administrative burdens at participating institutions of higher education, eliminate inequities affecting student applicants, and make several technical changes to correct or clarify the language of certain provisions in the regulations.

DATES: Effective Date: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the *Federal Register*. The effective date is changed by statute if the Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments

Although these revisions are being published as final regulations, the Secretary is soliciting comment on them. Comments may be submitted at the commenter's convenience; no closing date is specified.

FOR FURTHER INFORMATION CONTACT: William L. Moran, Bureau of Student Financial Assistance, Room 4318, ROB-3, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone (202) 472-4300.

SUPPLEMENTARY INFORMATION: In 1979 the Office of Education published new regulations for five of the title IV student

aid programs: Basic Educational Opportunity Grant Program—January 25, 1979; Campus-based Programs, (National Direct Student Loan, College Work-Study, Supplemental Educational Opportunity Grant)—August 13, 1979; and Guaranteed Student Loan Program—September 17, 1979.

Additionally, on September 28, 1979, regulations were published containing general provisions relating to all Title IV student assistance programs. These regulations, based on section 497A of the Higher Education Act of 1965, establish minimum standards regarding audits, financial responsibility, and administrative capability for participating institutions.

All of these regulations have now been in effect for a number of months. During the intervening period of time since their publication a number of issues have been raised which necessitate changes in the regulations. These changes are intended to improve program operations in a number of areas. They are outlined in detail in the following summary.

Summary of Major Issues: Description of Proposed Revisions to Title IV Student Aid Program Regulations

1. A revision in the definition of a "six month training program" in the Basic Grant regulations in order to reestablish eligibility for some previously eligible programs which were inadvertently made ineligible by the January 25, 1979 regulations.

Until February 27, 1979, the date the comprehensive revision to the Basic Grant regulations published on January 25, 1979, took effect, the Basic Grant regulations defined an eligible program as, among other things, a program of at least six months duration. As a result, institutions whose programs were six calendar months in length were allowed to participate in the program. When the Basic Grant regulations were revised in 1979, the definition of a six month training program was added. The definition was identical to the one that had been in effect for several years under the campus-based programs, Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan. Under this definition a six month training program was defined in terms of the education provided, i.e., 600 clock hours, 16 semester hours, or 24 quarter hours, rather than the length of time a particular program lasted.

It has come to the Secretary's attention that there are institutions offering six month programs that previously participated in the Basic Grant program that can no longer

participate because these programs are not 600 clock hours, 16 semester hours, or 24 quarter hours in length. Further, the Secretary believes that for many of these programs, the course content and work load requirements may be considered equal to the course content and work load requirements of several approved (600 clock hour, 16 semester hour, or 24 quarter hour) programs. The Secretary's opinion in this regard is in many cases buttressed by a similar determination by the accrediting association that accredits these programs. Therefore, the Secretary has decided to amend the definition of a six month program, retroactive to February 27, 1979, by adding the following provision. The Secretary will consider a training program of less than 600 clock hours, 16 semester hours or 24 quarter hours to be a "six month training program" if the Secretary determines that the course content and student work load requirements support that determination and the accrediting agency that accredits the program certifies that the program is comparable to a 600 clock hour, 16 semester hour or 24 quarter hour program.

In the interest of consistency, identical changes are also being made in the campus-based program regulations.

2. A revision in the Basic Grant regulations to provide a means for a student who has missed the March 15 application deadline to receive a grant on the basis of his or her Student Eligibility Report (SER) for the subsequent award period.

In administering a program which serves several million applicants annually, experience has shown that application and correction deadlines must be established and adhered to without exception if a processing system of this magnitude is to function. The Basic Grant application deadline has been established as March 15 of the award period for which the grant is to be used. And, applications may be submitted over a period of about fourteen months. For example, applications for the 1979-80 award period (July 1, 1979-June 30, 1980) were available beginning in January 1979, and could be submitted to the processor as late as March 15, 1980.

In spite of this extended period of time during which applications are available, some students invariably miss the deadline. This problem has been of particular concern to institutions measuring progress in clock hours which have a number of courses beginning after March 15. They contend that often prospective students may not have decided before March 15 to attend school and, thus, would not have filed

for a Basic grant. Then, if those students decide to enroll after March 15, but before July 1, they will not be able to receive a grant for the portion of their study occurring before July 1—the beginning of the subsequent award period.

This problem has been alleviated without changing the deadline. Prior to the January 25, 1979 regulations, a student's Basic Grant was pro-rated if he or she was enrolled in a term that occurred in two award periods. That is, the student was paid out of the first award period for the period of time that occurred in that award period, and out of the second award period for the period of time that occurred in the second award period. The regulations published on January 25, 1979 required an institution which used terms and measured progress in credit hours to pay a student for a term that occurred in two award periods as if it occurred entirely in one award period. Thus, only one SER was used, the one for the award period in which the term was considered to have occurred, and the amount of eligibility used was subtracted from the student's total eligibility for that award period.

The pre-January 1979 rule remained in effect for institutions which measure progress in clock hours and for institutions which measure progress in credit hours but do not use terms. However, the current amendment of § 190.65 extends the January 25, 1979 rule to these two types of institutions. To make this possible technically, the definition of a payment period in § 190.2a(e) is also amended to allow a payment period for those types of institutions to occur in two award periods. (Under the January 25, 1979 regulation, this was not the case.) Consequently, if the payment period for a student at an institution which measures progress in clock hours occurs in two award periods, the institution must consider that payment period as occurring entirely in one or the other of those two award periods.

As a result, if a student enrolls in an institution that measures progress in clock hours on April 15, 1980, and the student's first payment period is scheduled to end around July 15, 1980, the institution will have to treat that payment period as occurring in the 1979-80 award period, or in the 1980-81 award period. Thus, if the student failed to file his 1979-80 application to have his "eligibility index" determined by the March 15, 1980, deadline, the institution could still pay him for the work performed between April 15 and June 30 by considering the entire payment

period as occurring in the 1980-81 award period. Of course, the student would have to file an application for the 1980-81 award period and the institution would have to consider that payment period as occurring in the 1980-81 award period for all of its students whose payment period begins on the same day.

The definition of a payment period was changed for institutions that do not use terms (usually clock hour institutions) as follows:

1. The payment period for a full-time student is generally one-half of that student's academic year if his or her program of study is at least one academic year.

2. The payment period for a full-time student is one half of that student's program of study if his or her program of study is less than one academic year.

3. For a part-time student, the institution first determines the period of time it would take a full-time student to complete one academic year or the program of study if it is less than one academic year. The institution would then determine the number of clock hours the part-time student would complete in that time period. The student's first payment period would be the period of time the student would need to complete one-half of those clock hours. The second payment period would be the period of time needed to complete the other half of the clock hours.

Examples:

1. For a full-time student in a clock hour institution in a program of study of at least one academic year, where the academic year is 900 clock hours, the student's first payment period would be the period of time it would take the student to complete 450 clock hours. The student's second payment period would be the period of time it would take to complete the remaining 450 clock hours.

2. For a full-time student in a clock hour institution in a program of study of 800 clock hours (i.e., less than one academic year), the student's first payment period is the period of time it would take to complete 400 clock hours. The student's second payment period would be the period of time needed to complete the remaining 400 clock hours.

3. For a part-time student in a clock hour institution in a program of study of at least one academic year, where the academic year is 900 clock hours, the institution would first determine the period of time it would take a full-time student to complete 900 clock hours and would then determine the number of clock hours the part-time student would finish in that period.

If the student was scheduled to complete 450 clock hours in that period, the student's first payment period is the period of time needed to complete 225 clock hours. The second payment period is the period of time needed to complete the second 225 clock hours.

4. For a part-time student in a clock hour institution in a program of less than one academic year, the institution would use the steps set forth in example 3, except that the period of reference would be the period of time that a full-time student would take to complete that course of study, rather than to complete the academic year. Thus, if the student were scheduled to complete 300 clock hours in the period of time that a full-time student would complete 600 hours (for a 600 hour program), the student's first payment period is the period of time needed to complete 150 clock hours. The second payment period is the period of time needed to complete the second 150 clock hours.

For clock hour institutions participating in the Basic Grant Program under the Regular Disbursement System, this change has been made applicable to terms which occur in both the 1979-80 and 1980-81 award periods. However, because of Department of Education contractual restraints, it will not become effective until a later date for clock hour institutions that participate under the Alternate Disbursement System.

The above explanation and examples relate to institutions with two payment periods. If an institution wishes to have three payment periods the payment periods would be one-third, rather than one-half, of an academic year or of a program of study that is less than an academic year. Similar rules would apply to institutions with a greater number of payment periods.

3. *A change in the definition of a half-time student to more realistically reflect half-time status, especially at institutions offering evening programs.*

This change is intended to reinstitute minimum hour requirements for half-time status which existed in previous Basic Grant regulations. Prior to the effective date of the January 25, 1979 regulations, the following minima for half-time student status were set forth in Basic Grant regulations:

(i) 6 semester hours or 6 quarter hours per academic term for institutions utilizing semester, trimester, or quarter hour systems; (ii) 12 semester hours or 18 quarter hours per school year for institutions which measure progress in terms of credit hours but which do not utilize semester, trimester, or quarter systems; or (iii) 12 clock hours per week for institutions which utilize clock hours to measure progress.

The minima for full-time status were as follows:

(i) 12 semester hours or 12 quarter hours per academic term for institutions utilizing semester, trimester, or quarter hour systems; (ii) 24 semester hours or 36 quarter hours per school year for institutions which measure progress in terms of such credit hours but which do not utilize semester, trimester, or quarter hour systems; or (iii) 24 clock hours per week for institutions which utilize clock hours to measure progress.

In the January 25, 1979 regulations, the full-time minima in the former regulations were retained. The half-time definition was revised, however, to provide that half-time status is "at least half the work load of a full-time student."

This change had a negative effect on some institutions where a full-time program exceeded the minimum requirements while the half-time program met but did not exceed the minimum requirements for half-time under the old regulations. This situation exists most frequently at institutions measuring progress in clock hours with full-time programs during the day and part-time programs in the evenings. In instances of this nature, a full-time program may be forty clock hours per week while the half-time program is twelve. Under the old regulations, half-time status of twelve hours would be acceptable. However, under the current regulations, twenty clock hours per week is necessary for half-time status when the full-time program requires forty hours per week.

Our revision in the regulations reestablishes the previous minima for half-time status and accommodates those who contend that it is unrealistic to expect half-time status always to be at least one-half of the full-time workload, especially when the full-time program may be offered in the day while the half-time program is offered in the evening.

4. *Provide that an unnotarized statement of educational purpose may be used in lieu of the current requirement of a notarized affidavit of educational purpose.*

This revision eliminates a requirement that is a burden on both students and institutions and that in some instances requires the student to pay a fee. Section 1746 of Title 28 of the United States Code provides that whenever, under Federal law, an affidavit is necessary, an unsworn declaration, subscribed as true under penalty of perjury, will be equally valid. Thus, applicable provisions of the Guaranteed Loan, Basic Grant, and campus-based regulations are being amended to

provide that an institution may obtain an unnotarized statement of educational purpose from a student in lieu of an affidavit.

5. *Technical revisions to the Guaranteed Student Loan Program regulations published on September 17, 1979.*

The following changes in the GSLP regulations published on September 17, 1979, are being made in order to clarify the meaning of certain provisions and to eliminate certain duties previously imposed on program participants.

(a) Delete the rule under § 177.401(b)(7)(ii) that requires a guarantee agency to require its lenders to send GSLP checks directly to the student when the student is attending a foreign school.

(b) Change the phrase "during the first fiscal year" contained in § 177.407(b)(2)(ii)(A) to read "during the first twelve months" to be more consistent with section 428(f)(1)(C) of the Higher Education Act, which exempts guarantee agencies from certain minimum spending requirements under the administrative cost allowance for "the first year" of the agency's eligibility.

(c) Correct § 177.513(b) to require that a lender report an assignment of loans under the FISLP only if the right to receive interest benefits or special allowance has been assigned. This correction is consistent with current policy.

(d) Correct a cross-reference in § 177.516(a)(1)(ii).

(e) Revise § 177.601(b) (2) and (3) to make clear that the evidence of loan denial by a commercial lender is required only for an undergraduate student who has not previously obtained a loan made or originated by the school from which the student currently is seeking to obtain a loan.

(f) Amend § 177.607 (f) and (g) to establish one set of rules for how a school must process a late disbursement check, whether the check arrives after the end of the period for which the loan was intended or during that period but after the student has withdrawn. Also, amend § 177.509(g) to clarify the lender's role regarding late disbursement under the FISLP.

(g) Clarify § 177.611, so that the formula for determining the school-lender's default ratio includes the principal amount of loans that went into default during the year for which the ratio is being determined. This conforms to section 435(g)(3) of the Higher Education Act of 1965, as amended, which refers to loans in default during "each such year."

6. *Revisions in the financial aid transcript requirement published in the regulations setting forth general provisions on fiscal and administrative standards (45 CFR 168.14).*

When the fiscal and administrative standards regulations were published on September 28, 1979, we solicited public comment on their content, as we had done with the August 10, 1978, notice of proposed rulemaking on which these regulations were based. Although comments have been received on practically all sections of these regulations, the majority of the comments have been directed to § 168.14, the requirement that an institution maintain, and forward to another institution upon request, a transcript listing the Title IV financial aid a student has received at the former institution. The correspondence we have received and our discussions with members of the financial aid community indicate that serious difficulties may arise from several of the requirements included in § 168.14.

The financial aid transcript requirement, as it appeared in the September 28 regulations, had two main objectives:

(a) To prevent awards exceeding the statutory maxima, in those programs having statutory maxima, by ensuring that a financial aid administrator will know the amounts of aid a transfer student has received at institutions he or she previously attended, and

(b) To prevent a student from receiving any Title IV assistance if he or she is in default on a Title IV loan or owes a repayment on a Title IV grant received for study at an institution that student previously attended.

The financial aid community has expressed several major concerns about the financial aid transcript requirement. They are listed below followed by our proposed revision of the regulation to accommodate those concerns:

(a) *Issue:* The possibility exists that an eligible student may be unable to receive Title IV aid in a timely manner solely because his or her former institution is slow in forwarding the requested transcript to the institution where the student is currently enrolled. In this case, the student would be penalized in a situation over which neither he nor his or her current institution has any control. Furthermore, in the case of a GSL, some additional administrative problems would occur affecting both the lenders and the guarantee agencies, by allowing a check to be held until a transcript arrived. For example, determinations would have to be made about: (1) How long an institution could hold a check which had

been disbursed by a non-school lender before having to return it to that lender; (2) whether the check that a student never received due to lack of a transcript would be handled as a cancelled loan or a loan paid in full; (3) whether insurance premiums for these loans would have to be refunded to lenders by the guarantee agencies; and (4) whether lenders would be required to reinvestigate a student's eligibility prior to completely denying the loan to a student whose transcript never arrived.

Revision: The regulations provide that an institution may disburse Title IV funds to a student for one payment period without a financial aid transcript if the transcript, or a notice that the transcript will not be forthcoming has not been provided in a timely manner. But no subsequent payments (other than GSL's when the institution is not the lender) may be made until the institution receives the transcript or a letter from the student's previous institution which states that the transcript will not be forthcoming for specified reasons other than the student's default on a loan or liability for a refund on a grant.

The revised regulation will also provide that all GSLP funds may be released to a student who has enrolled, as required by that program's regulations (45 CFR Part 177), except that if the institution is a GSLP lender under the FISLP program or a guarantee agency program, it must withhold disbursement of any GSLP funds to a GSLP borrower in accordance with the provisions which apply to the other Title IV programs.

This revision is being made, due to the complications that could arise if the requirement for withholding of GSLP loans were made applicable to all institutions. We feel that it will be consistent with the other transcript requirements to limit the provision's applicability, at least for the present, to institutions that can actually make GSLP loans.

(b) **Issue:** Some information required by the current regulation to be on the financial aid transcript may already be available through other sources. The processing systems of the agencies which insure Guaranteed Student Loans have a mechanism for rejecting applications when statutory loan limits have been reached or when a student is in default on a loan previously insured by that insuring agency.

We anticipate that within the near future the tracking systems which monitors the amount of Basic Grant eligibility a student has used will be able to report in a more timely fashion the cumulative amount of eligibility a student has used up to the current

award period. If this information is available through the central processor, it would be unnecessary to require institutions to collect on the transcript information on cumulative Basic Grant eligibility used. Thus, the transcript would need to include only the amount of eligibility used within the award period when a student is transferring to ensure that the student's Scheduled Award for that award period is not exceeded.

Revision: To eliminate requirements that institutions collect information that will be available from other sources, we are eliminating the requirement that Guaranteed Student Loan information and cumulative Basic Grant information be included on the transcript. The regulation will therefore only require the institution to provide information concerning the amounts of loan funds advanced for each award period under the NDSL program, the amount of grant funds disbursed for each award period under the SEOG program, and the amounts of Basic Grant disbursements and Scheduled Awards for the award period in which a student transfers.

(c) **Issue:** The current transcript regulation requires transcripts from every student who has attended a previous institution before Title IV aid can be disbursed to that student, without regard to the number of hours for which the student was enrolled at the previous institution or whether the student was enrolled in a foreign institution.

Revision: The regulation is being revised to provide that the transcript is required only if the student received a Supplemental Grant or National Defense/Direct Student Loan at the institution or a Basic Grant in the award period in which the transcript request was made.

(d) **Issue:** A number of institutions have indicated that the November 8, 1979 effective date of the fiscal and administrative standards regulations has created an administrative burden with regard to the implementation of the transcript requirement. They have indicated that this requirement could much more easily be put into effect if its implementation were postponed until the beginning of the coming award year.

Revision: To eliminate the administrative burden caused by implementing the transcript requirement in the middle of the award year, the former regulation is revoked retroactive to November 8, 1979, its original effective date, and the revised transcript requirements are made effective July 1, 1980.

7. **Removal of the Guaranteed Student Loan Program from the formula for**

distributing repayments of cash disbursements made directly to a student in the fiscal and administrative standards regulations (45 CFR 168.21(c)).

Section 168.21 of the fiscal and administrative standards regulations sets forth formulae to be used in determining amounts to be returned to Title IV programs when (a) an institutional refund is due to a student, and (b) a portion of a cash payment is to be returned by the student because the student has left school before the end of the term for which that disbursement was made. The formula for determining the distribution of an institutional refund can be applied readily to all Title IV programs. However, the formula for determining the distribution of a portion of a cash disbursement returned by the student has the potential for conflicting with or complicating certain requirements in effect for the Guaranteed Student Loan Program.

Revision: To eliminate this potential for conflicting requirements, we are deleting Guaranteed Student Loan funds from all requirements for determining the distribution of a repayment of a portion of a cash disbursement.

8. **Technical revisions to the regulations establishing institutional fiscal and administrative standards (45 CFR Part 168 Subpart B).**

We are making the following additional changes in the institutional fiscal and administrative standards regulations, published on September 28, 1979. These revisions are necessary in order to clarify the meaning of certain provisions, to add nomenclature that was inadvertently omitted, and to correct errors that were made when the regulations were drafted.

These changes are:

(a) Amend the audit and recordkeeping requirements contained in § 168.12(a) to include the biennial audit and five year record retention requirements. These provisions, currently included in applicable program regulations, were inadvertently omitted from the September 28, 1979 standards regulations.

(b) Explicitly provide the Secretary with access to an institution's records reflecting transactions with any financial institution with which it deposits or has deposited Title IV funds.

(c) Eliminate, under § 168.15(f), the applicability of the bonding requirement for public institutions which are components of State governments and are already bonded by their respective States. As amended, the bonding requirement will require only private nonprofit and proprietary postsecondary educational institutions to obtain and

maintain a fidelity bond to protect the Government's interest.

(d) Redraft § 168.18(a), "Change in ownership or control," to make clear that § 168.18 also applies to the acquisition, by an eligible institution, of a previously eligible institution.

9. *Addition of the definition of a "postsecondary vocational institution."*
The Higher Education Technical Amendments of 1979 provided for a new type of eligible institution, the "postsecondary vocational institution." Program regulations have been amended to incorporate this new type of institution.

The definition of a postsecondary vocational institution has several unique elements for a public institution. It may admit as regular students only high school graduates or their equivalent; it must be fully accredited; and it must have been providing a training program for two years before it is eligible to participate in any Title IV program.

Proposed regulations to be published in the near future. In addition to the regulation revisions described above, the Department of Education is planning to propose two additional changes which will be published as a notice of proposed rulemaking with a solicitation of public comment.

One of these proposed changes will be a deletion of the requirement that an institution document on a student-by-student basis "ability to benefit from the training offered" for those students it admits who are beyond the age of compulsory school attendance but do not have a high school diploma or the equivalent. The proposed regulation will also provide that the institution should develop and apply reasonable criteria for determining ability to benefit which are consistent with generally used standards of the educational community.

The second proposed regulation on which public comment will be solicited concerns deferment of Guaranteed Student Loan repayments for students engaged in rehabilitation training programs. Under a provision of the Middle Income Student Assistance Act (Pub. L. 95-566) a disabled borrower may defer repayment on a loan if he or she is engaged in a rehabilitation program approved by the Secretary. The notice of proposed rulemaking will submit for public comment a listing of criteria under which rehabilitation programs can receive the Secretary's approval.

Waiver of Notice of Proposed Rulemaking. The regulatory changes made respond to comments received from the financial aid community which pointed out problems and concerns with some of the provisions of the six student

financial aid regulations published by the Office of Education in 1979. In addressing these concerns, the Secretary has liberalized provisions to enable institutions and students who previously participated in the Basic Grant Program to continue to do so. The Secretary has also liberalized the Basic Grant regulations to accommodate students who previously were unable to receive a grant in a year because they started classes too late in that year, lessened the administrative burden on institutions with regard to the financial aid transcript, and insured that the regulations conform to changes in the law pertaining to the Guaranteed Student Loan program and the law pertaining to notarized affidavits of educational purpose. Finally, other changes of a technical nature were also made.

Accordingly, in view of the nature of the changes as described above, the Secretary finds that the publication of a proposed rule in this instance would be unnecessary, impracticable and contrary to the public interest within the meaning of 5 U.S.C. 553(b), and is publishing these rules as final regulations.

Dated: June 19, 1980.

Steven A. Minter,

Acting Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: Basic Educational Opportunity Grant Program, 13.539; National Direct Student Loan Program, 13.471; College Work-Study Program, 13.463; Supplemental Educational Opportunity Grant Program, 13.418; Guaranteed Student Loan Program, 13.460; State Student Incentive Grant Program, 13.548)

PART 168—STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart B of Part 168 of Title 45 of the Code of Federal Regulations is amended as follows:

1. The title of Part 168 is amended to read as follows: STUDENT ASSISTANCE GENERAL PROVISIONS.

1a. In § 168.12, paragraph (a) is amended and paragraph (b)(3) is added to read as follows:

§ 168.12 Audits, records and examination.

(a) If an institution participates in the National Direct Student Loan (45 CFR Part 174), College Work-Study (45 CFR Part 175), Supplemental Educational Opportunity Grant (45 CFR Part 176), Guaranteed Student Loan (45 CFR Part 177), or Basic Educational Opportunity Grant (45 CFR Part 190) Programs, it shall comply with the regulations for those programs concerning (1) fiscal and accounting systems, (2) biennial audits of institutional transactions, (3) program

and fiscal recordkeeping, and (4) record retention.

(b) * * *

(3) Upon written request, an institution shall give the Secretary access to all program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any title IV funds.

(20 U.S.C. 1088f-1.)

§ 168.14 [Revoked]

2. Section 168.14 is revoked, retroactive to November 8, 1979.

3. Effective July 1, 1980, a new § 168.14 is added to read as follows:

§ 168.14 Financial aid transcript.

(a)(1) *Disbursing money only after receiving a transcript—general rule.* If informed by a student that he or she attended another eligible institution on at least a half-time basis, the institution the student is currently attending shall not disburse any title IV funds (other than Guaranteed Student Loan checks where the institution is not the lender) to that student before obtaining a properly signed financial aid transcript from the institution or institutions the student previously attended, unless the other institution or institutions each indicate, in writing that they are not required to provide a transcript under the provisions of paragraph (b) or paragraph (c)(2) or (c)(3) of this section. The student's current institution may disburse title IV funds on the basis of such a written notice or notices.

(2) *Limited exception to the general rule.* The institution the student is currently attending may disburse title IV funds to a student for one payment period if it does not receive in a timely manner the requested transcript or a written notice that the transcript will not be forthcoming as provided in paragraph (d) of this section.

(b) *Providing a transcript—general rule.* (1) Upon request, an institution shall provide to another institution a financial aid transcript for a current or former student who received, while attending the institution—

(i) A Basic Grant during the award period in which the request for the transcript is made;

(ii) A Supplemental Grant; or

(iii) A National Direct Student Loan.

(2) The institution shall honor a request for a transcript from a student or the institution the student is attending or planning to attend.

(3) The institution shall provide the transcript in a timely manner.

(4) The transcript must be signed by an official authorized by the institution to sign such transcripts.

(c) *Exceptions to the general rule in paragraph (b) of this section.* An institution does not have to provide the requested transcript if—

(1) The subject student—

(i) Is in default on any title IV loan made or received for attendance at that institution; or

(ii) Owes a refund on any title IV grant received for attendance at that institution;

(2) The transcript would only include information based on records that the institution is no longer required to keep under the record retention regulations referred to under § 168.12(a); or

(3) The institution participates in the Basic Grant Program under the Alternate Disbursement System and does not also participate in the Supplemental Grant or National Direct Student Loan program in the award period in which the request for the transcript is received.

(d) *Notifying the student's new institution in a timely manner that the transcript is not forthcoming.* If an institution has been requested to provide a transcript but is not required to do so according to paragraph (b) or paragraph (c) of this section, it must notify the student's new institution in writing in a timely manner that the transcript will not be forthcoming and specify the reason for the refusal.

(e) *Information included in a student's financial aid transcript.* A student's financial aid transcript shall include, with respect to any year for which the institution is required to keep that student's financial aid records, at least the following information—

(1) The student's name and social security number;

(2) Whether the student was independent or dependent, for the last award year in which aid was received;

(3) For the award period in which the request for the transcript is made, the student's Scheduled Basic Grant and the amount of Basic Grant funds disbursed to the student;

(4) The amount of Supplemental Grants disbursed to the student during each award year;

(5) The amount of National Direct Student Loans advanced to the student during each award year;

(6) Whether the student is in default on—

(i) A National Direct Student Loan made by the institution, or

(ii) A Guaranteed Student Loan the student received for attendance at the institution if the institution is aware of the default status, and

(7) Whether the student owes a refund on—

(i) A Basic or Supplemental Grant for attendance at the institution, or

(ii) A State Student Incentive Grant received for attendance at the institution, if the institution is aware that the student owes the refund.

(20 U.S.C. 1088f-1.)

4. In § 168.15, paragraph (f)(1) is amended to read as follows:

§ 168.15 Factors of financial responsibility.

* * * * *

(f)(1)(i) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the title IV funds it receives as a trustee.

(ii) However, a public institution that is bonded by the State against the type of losses described in paragraph (f)(2) of this section does not have to obtain additional fidelity bond coverage.

* * * * *

5. In § 168.18, paragraph (a) is amended to read as follows:

§ 168.18 Change in ownership or control.

(a) An eligible institution, or a previously eligible institution that participated in any title IV program, that changes ownership resulting in a change in control is not considered by the Secretary to be the same institution unless—

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all improperly spent title IV funds provided to the institution before the effective date of the change;

(2) The new owner agrees—

(i) To abide by the institution's refund policy in effect before the effective date of the change for students who were enrolled before the effective date, and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change; and

(3) The institution submits individual statements for both new and former owners listing their assets, liabilities, and net worth, and either—

(i) A profit and loss statement and balance sheet for the institution's latest complete fiscal year, or

(ii) An audit for the institution's latest complete fiscal year prepared by a certified or licensed public accountant; and

(4) The institution submits additional financial documents if requested by the Secretary because the financial

information provided under subparagraph (3) is insufficient.

* * * * *

(20 U.S.C. 1088f-1.)

6. Section 168.21 is amended to read as follows:

§ 168.21 Distribution formula for institutional refunds and repayments of cash disbursements made directly to the student.

(a) *Institutional refunds to title IV programs.* (1) If a refund is due to a student under the institution's refund policy and the student received financial aid under any title IV student financial aid program other than the College Work-Study Program, a portion of the refund shall be returned to the title IV program(s).

(2) Except as provided in paragraph (a)(3) of this section the institution shall multiply the institutional refund by the following fraction to determine the portion of the refund to be returned to the title IV program(s):

total amount of title IV aid (exclusive of work earnings) awarded for the payment period

total amount of aid (exclusive of work earnings) awarded for the payment period

(3) If a student has received Basic Grant funds at the institution under the Alternate Disbursement System,

(i) The institution shall use the following fraction in lieu of the fraction in paragraph (a)(2) of this section to determine the portion of the refund to be returned to the title IV programs (other than the Basic Grant program.)

total amount of title IV aid (exclusive of work earnings and Basic Grant funds) awarded for the payment period

total amount of aid (exclusive of work earnings and Basic Grant funds) awarded for the payment period

(ii) the institution shall notify the Secretary of the amount of money that it is returning to the title IV program according to paragraph (a)(3)(i) of this section.

(b) *Distribution among the title IV programs.* (1) The institution shall develop written policies allocating the title IV portion of the refund to the various title IV programs from which the student received aid. These policies shall be applied on a consistent basis to all students receiving title IV funds.

(2) The portion of a refund allocated to a program may not exceed the amount a student received from that program.

(3) As provided in 45 CFR 177.610 of the Guaranteed Student Loan Program regulations, the institution shall return to the student's lender any portion of a

refund which is allocable to a loan made under the Guaranteed Student Loan Program.

(c) *Distribution of repayments of cash disbursements made directly to the student for non-institutional costs.*

(1) Any cash that an institution disbursed to a student for a payment period under any title IV program other than the College Work-Study or Guaranteed Student Loan program becomes an overpayment if before the first day of classes of that payment period the student officially withdraws, drops out, or is expelled.

(2) An institution shall determine, under paragraph (c)(3) of this section, whether any cash it disbursed to a student for a payment period under any title IV program other than the College Work-Study or Guaranteed Student Loan program amounts to an overpayment if the student withdraws, drops out, or is expelled on or after the first day of classes of that payment period.

(3) In determining whether a student received an overpayment for purposes of paragraph (c)(2) of this section, and the amount of that overpayment, the institution shall subtract from the cash disbursed to the student for non-institutional costs, the non-institutional costs that were to be paid by the disbursement for the portion of the payment period during which the student was enrolled. Non-institutional educational costs may include, but are not limited to, room and board (if not contracted for with the institution), books and supplies, transportation and miscellaneous expenses.

(4) If a student drops out, the institution shall use the last recorded day of class attendance by the student as the end of the student's enrollment. However, if it is unable to document the student's last day of attendance, any cash it disbursed to that student for that payment period is an overpayment.

(5) The institution shall multiply the overpayment by the following fraction to determine the portion of the overpayment to be returned to the title IV program(s):

total amount of title IV aid (exclusive of work earnings and Guaranteed Student Loans) awarded for the payment period—

total amount of aid (exclusive of work earnings and Guaranteed Student Loans) awarded for the payment period

(d) *Distribution among the title IV programs.* (1) The institution shall develop written policies allocating the title IV portion of the overpayment owed by the student to the various title IV programs from which the student received aid. These policies shall be

applied on a consistent basis to all students receiving title IV aid.

(20 U.S.C. 1088f-1.)

PART 174—NATIONAL DIRECT STUDENT LOAN PROGRAM

Part 174 of Title 45 of the Code of Federal Regulations is amended as follows:

1. In § 174.2a, the introductory sentence is amended and paragraphs (e) and (f) are added, to read as follows:

§ 174.2a Institution of higher education.

An institution of higher education is a public, private nonprofit, proprietary, or postsecondary vocational institution.

(e) In lieu of the credit or clock hour requirements of paragraphs (d)(1) and (d)(2) of this section, the Secretary may determine that an institution offers a six-month program of training if—

(1) He or she determines that the institution's course content and student work load requirements support that determination, and

(2) The accrediting association that accredits the institution certifies that the program offered by the institution is equal in course content and student work load to the comparable clock or credit hour program described in paragraph (d) of this section.

(f) *A postsecondary vocational institution* is a public or other nonprofit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma, or

(ii) Have the recognized equivalent of a high school diploma;

(3) Is legally authorized to provide an education program beyond secondary education in the State in which the institution is physically located;

(4) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is accredited by a nationally recognized accrediting agency or association; and

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years if it is legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(20 U.S.C. 1141(a); 20 U.S.C. 1088(b) (3) and (4).)

(2) In § 174.2b paragraph (b)(4) is amended to read as follows:

§ 174.2b Eligible Program.

(b) * * *

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A six month training program is defined in § 174.2a (d) and (e)).

(20 U.S.C. 1141(a), 1088(b) (3) and (4).)

3. In § 174.16, paragraph (i) is amended to read as follows:

§ 174.16 Making and disbursing loans.

(i)(1) An institution may not disburse loan funds to a student unless the student affirms or declares that he or she will use the loan solely for educational expenses in connection with attendance at the institution.

(2) The student may satisfy this requirement by filing either—

(i) A notarized affidavit, or

(ii) A written statement.

(3) The statement or the affidavit must be on a form approved by the Secretary. Forms approved for this purpose are set forth in Appendix E.

(20 U.S.C. 1088g; 28 U.S.C. 1746)

4. Appendix E is added to read as follows:

Appendix E—Affidavit of Educational Purpose

I affirm that I will use any funds I receive under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan or Guaranteed Student Loan programs solely for expenses related to attendance at

(Name of Institution)

I understand that I am responsible for repaying any funds that I receive which cannot reasonably be attributed to meeting my educational expenses related to attendance at

(Name of Institution)

I further understand that the amount of any repayment is based on regulations published by the Secretary of Education.

Signature (Sign only in presence of a Notary)
Academic period covered by award(s)

19— to 19—
Month Year Month Year

Subscribed and sworn before me this —

day of —, 19—

My commission expires: —

(Signature of Notary Public)

(Address of Notary Public)

Statement of Educational Purpose

I affirm that I will use any funds I receive under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan, or Guaranteed Student Loan programs solely for expenses related to attendance at _____

(Name of Institution)

I understand that I am responsible for repaying any funds I receive which cannot reasonably be attributed to meet my educational expenses at _____

(Name of Institution)

I further understand that the amount of any repayment is based on regulations published by the Secretary of Education.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____

Academic period covered by award(s)

_____, 19____ to _____, 19____
Month Year Month Year

PART 175—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

Part 175 of Title 45 of the Code of Federal Regulations is amended as follows:

1. In § 175.2, the introductory sentence is amended and paragraphs (e) and (f) are added, to read as follows:

§ 175.2a Institution of higher education.

An institution of higher education is a public, private nonprofit, proprietary, or postsecondary vocational institution.

(e) In lieu of the credit or clock hour requirements of paragraphs (d)(1) and (d)(2) of this section, the Secretary may determine that an institution offers a six-month program of training if—

(1) He or she determines that the institution's course content and student work load requirements support that determination, and

(2) The accrediting association that accredits the institution certifies that the program offered by the institution is equal in course content and student work load to the comparable clock or credit hour program described in paragraph (d) of this section.

(f) A postsecondary vocational institution is a public or other nonprofit educational institution which—

(1) Is in a State;
(2) Admits as regular students only persons who—
(i) Have a high school diploma, or
(ii) Have the recognized equivalent of a high school diploma;

(3) Is legally authorized to provide an education program beyond secondary education in the State in which the institution is physically located;

(4) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is accredited by a nationally recognized accrediting agency or association; and

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years if it is legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(20 U.S.C. 1085(b), and 1088(b)(3) and (4).)

2. In § 175.2b the introductory sentence and paragraph (b)(4) are amended to read as follows:

§ 175.2b Eligible program.

An eligible program in an institution of higher education is a program of education or training that—

(b) * * *

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A six month program is defined in § 175.2a(d) and (e)).

(20 U.S.C. 1141(a) and 1088(b)(3) and (4).)

3. Section 175.9(b)(1) is amended to read as follows:

§ 175.9 Student eligibility.

(b) * * *

(1) Satisfies the conditions under paragraphs (a)(1), (a)(2), (a)(4), and (a)(5);

4. Section 175.16(d) is amended to read as follows:

§ 175.16 Payments to students.

(d)(1) An institution may not pay a student College Work-Study wages unless the student affirms or declares that he or she will use those wages solely for educational expenses in connection with attendance at the institution.

(2) The student may satisfy this requirement by filing either—

(i) A notarized affidavit, or
(ii) A written statement.

(3) The statement or the affidavit must be on a form approved by the Secretary. Forms approved for this purpose are set forth in Appendix C.

(20 U.S.C. 1088g; 28 U.S.C. 1746)

5. Appendix C is added to read as follows:

Appendix C—Affidavit of Educational Purpose

I affirm that I will use any funds I receive under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan or Guaranteed Student Loan programs solely for expenses related to attendance at _____

(Name of Institution)

I understand that I am responsible for repaying any funds that I receive which cannot reasonably be attributed to meeting my educational expenses related to attendance at _____

(Name of Institution)

I further understand that the amount of any repayment is based on regulations published by the Secretary of Education.

Signature (Sign only in presence of a Notary)

Academic period covered by award(s)

_____, 19____ to _____, 19____
Month Year Month Year

Subscribed and sworn before me this _____ day of _____, 19____

My commission expires: _____

(Signature of Notary Public)

(Address of Notary Public)

Statement of Educational Purpose

I affirm that I will use any funds I receive under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan, or Guaranteed Student Loan programs solely for expenses related to attendance at _____

(Name of Institution)

I understand that I am responsible for repaying any funds I receive which cannot reasonably be attributed to meeting my educational expenses at _____

(Name of Institution)

I further understand that the amount of any repayment is based on regulations published by the Secretary of Education.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____

Academic period covered by award(s)

_____, 19____ to _____, 19____
Month Year Month Year

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Part 176 of Title 45 of the Code of Federal Regulations is amended as follows:

1. In § 176.2a, the introductory sentence is amended and paragraphs (e) and (f) are added to read as follows:

§ 176.2a Institution of higher education.

An institution of higher education is a public, private nonprofit, proprietary or postsecondary vocational institution.

(e) In lieu of the credit or clock hour requirements of paragraphs (d)(1) and (d)(2), the Secretary may determine that an institution offers a six-month program of training if—

(1) He or she determines that the institution's course content and student work load requirements support that determination, and

(2) The accrediting association that accredits the institution certifies that the program offered by the institution is equal in course content and student work load to the comparable clock or credit hour program described in paragraph (d) of this section.

(f) A postsecondary vocational institution is a public or other non-profit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma, or

(ii) Have the recognized equivalent of a high school diploma;

(3) Is legally authorized to provide an education program beyond secondary education in the State in which the institution is physically located;

(4) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is accredited by a nationally recognized accrediting agency or association; and

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years if it is legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(20 U.S.C. 1141(a), 20 U.S.C. 1088(b) (3) and (4).)

2. In § 176.2b, paragraph (b)(4) is amended to read as follows:

§ 176.2b Eligible program.

(b) * * *

(4) Is, for a proprietary institution or a postsecondary vocational institution, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A six-month program is defined in § 176.2a (d) and (e).)

(20 U.S.C. 1141(a) and 1088(b) (3) and (4).)

3. Section 176.16(h) is amended to read as follows:

§ 176.16 Payment of grant.

(h)(1) An institution may not pay a Supplemental Educational Opportunity Grant unless the student affirms or declares that he or she will use the grant solely for educational expenses in connection with attendance at the institution.

(2) The student may satisfy this requirement by filing either—

(i) A notarized affidavit, or

(ii) A written statement.

(3) The statement or the affidavit must be on a form approved by the Secretary. Forms approved for this purpose are set forth in Appendix B.

(20 U.S.C. 1088g; 28 U.S.C. 1746.)

4. Appendix B is added to read as follows:

Appendix B—Affidavit of Educational Purpose

I affirm that I will use any funds I receive under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan or Guaranteed Student Loan programs solely for expenses related to attendance at

(Name of Institution)

I understand that I am responsible for repaying any funds that I receive which cannot reasonably be attributed to meeting my educational expenses related to attendance at

(Name of Institution)

I further understand that the amount of any repayment is based on regulations published by the Secretary of Education.

Signature (Sign only in presence of a Notary)

Academic period covered by award(s)

Month Year to Month Year

Subscribed and sworn before me this day of 19

My commission expires:

(Signature of Notary Public)

(Address of Notary Public)

Statement of Educational Purpose

I affirm that I will use any funds I receive under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan, or Guaranteed Student Loan programs solely for expenses related to attendance at

(Name of Institution)

I understand that I am responsible for repaying any funds I receive which cannot

reasonably be attributed to meeting my educational expenses at

(Name of Institution)

I further understand that the amount of any repayment is based on regulations published by the Secretary of Education.

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date:

Academic period covered by award(s)

Month Year to Month Year

PART 177—GUARANTEED STUDENT LOAN PROGRAM

Part 177 of Title 45 of the Code of Federal Regulations is amended as follows:

1. In § 177.200 under the definition of "Vocational school", paragraph (a)(2)(ii) is amended to read as follows:

§ 177.200 General definitions.

Vocational school:

(a) * * *

(2) * * *

(ii) Has the ability to benefit from the training offered. A school shall develop criteria for determining a student's ability to benefit from the training offered.

2. In § 177.201 paragraph (a)(1)(ii) is amended to read as follows:

§ 177.201 Eligible student.

(a) * * *

(1) * * *

(ii) If enrolled or accepted for enrollment in a vocational school, the student must be attending neither elementary nor secondary school and have the ability to benefit from the training offered, as required under the definition of "Vocational school" in § 177.200.

3. Section 177.203 is amended to read as follows:

§ 177.203 Affidavit or statement of educational purpose.

(a)(1) No loan may be insured under this program unless the student affirms or declares that he or she will use the loan proceeds solely for costs of attendance at the school the student is or will be attending.

(2) The student may satisfy this requirement by filing either—

(i) A notarized affidavit; or

(ii) A written statement.

(3) The statement or the affidavit must be in a form approved by the Secretary.

(b) the student must file the affidavit or statement with the lender. The lender shall retain a copy of the affidavit or

statement as required in § 177.408(a) or § 177.519(a).

(20 U.S.C. 1082, 1088g; 28 U.S.C. 1746)

4. In § 177.401 paragraphs (b)(5)(ii)(A) and (b)(7)(ii) are amended to read as follows:

§ 177.401 Basic agreement.

(b) * * *

(5) * * *

(ii) * * *

(A) An affidavit or statement, described in § 177.203, that the loan will be used for the cost of attendance;

(7) * * *

(ii) By the lender sending all loan checks to the school for delivery to the borrower.

5. In § 177.407 paragraph (b)(2)(ii)(A) is amended to read as follows:

§ 177.407 Administrative cost allowances for guarantee agencies.

(b) * * *

(2) * * *

(ii) * * *

(A) The spending minimum described in paragraph (b)(2)(i) for the administrative costs of collection of loans and preclaim assistance for default prevention does not apply during the first twelve months in which the agency is eligible to receive the advance; and

6. In § 177.509 paragraph (g)(4)(i) is amended and paragraph (g)(4)(iii) is added to read as follows:

§ 177.509 Due diligence in making and disbursing a loan.

(g) * * *

(4) *Late disbursements.* (i) Under certain circumstances a lender, with the prior approval of the Secretary, may disburse a FISLP loan after a borrower has ceased to be enrolled on at least a half-time basis or after the expiration date of the insurance commitment.

(iii) If the lender, after receiving the Secretary's prior approval, makes a late disbursement, the lender shall give notice of that approval to the school at the time it sends the loan check to the school.

(20 U.S.C. 1077, 1080, 1082, 1083, 1085)

7. In § 177.513 paragraph (b)(2)(i) is amended to read as follows:

§ 177.513 Assignment of a FISLP loan.

(b) * * *

(2) * * *

(i) Notify the Secretary of the assignment if the right to receive interest benefits and special allowance payments has been assigned; and

8. In § 177.516 paragraph (a)(1)(ii)(A) is amended to read as follows:

§ 177.516 Procedures for filing claims.

(a) * * *

(1) * * *

(ii)(A) If the lender has exercised the option (under § 177.509(e)(3)) of including a provision in the promissory note which requires the borrower to execute a repayment schedule not later than 120 days prior to the beginning of the repayment period, and the borrower has not executed a schedule by that date, despite compliance by the lender with § 177.510(b)(1)(ii), the 120-day period begins 120 days prior to the beginning of the repayment period.

9. In § 177.601 paragraphs (b)(2) and (b)(3) are amended to read as follows:

§ 177.601 Agreement between the Secretary and a school that makes or originates loans.

(b) * * *

(2) The school will inform any undergraduate student who has not previously obtained a loan that was made or originated by the school and who seeks to obtain such a loan that he or she must first make a good faith effort to obtain a loan from a commercial lender.

(3)(i) The school will not make or originate a loan for an academic period to a student described in paragraph (b)(2) of this section until the student provides the school with evidence of denial of a loan by a commercial lender for the same academic period. Evidence acceptable for this purpose is described in paragraph (c) of this section.

(ii) In determining whether a school has complied in good faith with this requirement, the Secretary may take into consideration any patterns reflected by the letters of denial or students' sworn statements referred to in paragraph (c) of this section that indicate that the school has not given sufficient counseling to students to first seek loans from a commercial lender. An example of an unacceptable pattern would be if all denials of loans to a school's students were made by a small number of lenders.

§ 177.603 [Revoked]

10. Section 177.603 is revoked.

11. In § 177.607 paragraph (g) is deleted and paragraph (f) is amended to read as follows:

§ 177.607 The student's loan check.

(f) *Processing a late disbursement check.* (1) For purposes of this paragraph, a loan check is considered a late disbursement check if the school receives the student's loan check from the lender either—

(i) After the expiration of the academic period for which the loan was intended (the expiration date of the insurance commitment); or

(ii) Prior to the expiration of the academic period for which the loan was intended but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) If the late disbursement check is accompanied by a notice from the lender that the late disbursement has been approved by the Secretary or the appropriate guarantee agency, the school shall follow the applicable procedure described in paragraph (c) or (d) of this section.

(3) If the late disbursement check is not accompanied by the notice described in paragraph (f)(2) of this section, the school shall—

(i) Return the check to the lender within 30 days of its determination that one of the conditions described in paragraph (f)(1) of this section exists;

(ii) Send with the check—
(A) A notice that one of the conditions described in paragraph (f)(1) of this section exists; and

(B) If applicable, information concerning the student's date of withdrawal and costs of attendance owed the school for the period the student was enrolled on at least a half-time basis;

(iii) Advise the student that the lender may, in accordance with § 177.509(g)(4) or similar rules established by the guarantee agency, reimburse funds for the student's costs of attendance incurred before the existence of one of the conditions described in paragraph (f)(1) of this section.

(20 U.S.C. 1078, 1082)

12. In § 177.611 paragraph (b)(1)(i) is amended to read as follows:

§ 177.611 Termination of a school's lending eligibility.

(b) * * *

(1) * * *

(i) The original principal amount of loans the school has ever made that went into default during that period.

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Part 190 of Title 45 of the Code of Federal Regulations is amended as follows:

1. In § 190.2, the definitions of half-time student and three-quarter-time student are amended to read as follows:

§ 190.2 General definitions.

Half-time student. (a) An enrolled student who is carrying half-time academic work load—as determined by the institution—which amounts to at least half the work load of the appropriate minimum requirement outlined in the definition of a full-time student. (See definition of full-time student.)

(b) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of preparation of work per week. However, regardless of the work load, no student enrolled solely in correspondence study will be considered more than a half-time student.

Three-quarter-time student. An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—which amounts to at least three quarters of the work load of the appropriate minimum requirement outlined in the definition of a full-time student. (See definition of full-time student.)

2. In § 190.2a, paragraphs (a)(2)(iv), (e) and (f) are amended and paragraph (g) is added, to read as follows:

§ 190.2a Special terms.

(a) *Eligible program.* * * *

(2) * * *

(iv) Is, for a proprietary or postsecondary vocational institution, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A six-month program is defined in § 190.3(d) and (e).)

(e) *Payment period for an institution using the Regular Disbursement System that does not use academic terms.* (1) An institution participating in the Basic Grant program under the Regular Disbursement System (RDS institution) that does not use semesters, trimesters, quarters, or other academic terms must have at least two payment periods for each academic year, or for each program which is less than an academic year.

(2) For a full-time student whose educational program is one academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours), and

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

(3) For a full-time student whose educational program is more than one academic year, the first and second payment periods shall be calculated under paragraph (e)(2) of this section. For subsequent academic years, or fractions of academic years, each payment period shall be the period of time in which the student completes—

(i) One-half of the academic year, or

(ii) The remaining hours in the student's educational program, whichever is to be completed first.

(4) For a full-time student whose educational program is LESS than an academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her educational program (in credit or clock hours), and

(ii) The second payment period is the period of time in which the student completes the second half of that educational program.

(5) The payment period for an eligible part-time student shall be calculated as follows:

(i) Determine the length of time it would take a full-time student in the program to complete one academic year or a program of less than one academic year, as appropriate.

(ii) The first payment period is the period of time in which the part-time student completes half the work (in credit or clock hours) he or she is scheduled to complete in the period referred to in paragraph (e)(5)(i) of this section.

(iii) The second payment period begins when the first payment period ends and ends when the student completes the other half of the work that he or she was scheduled to complete in the period referred to in paragraph (e)(5)(i) of this section.

(iv) Each subsequent payment period begins when the previous period ends and ends when the part-time student completes—

(A) Half the work he or she is scheduled to complete during the period of time referred to in paragraph (e)(5)(i) of this section, or

(B) The remaining hours of his or her educational program, whichever is completed first.

(6) If an RDS institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year, the rules set forth in paragraphs (e)(2) through (e)(5) of this section shall be modified to reflect the number of payment periods. For example, if an institution chooses to have three payment periods for an academic year, each payment period shall correspond, for a full-time student, to one-third of the academic year.

(7) This paragraph (e) of this section is effective as of March 1, 1980.

(f) *Payment period for an institution using the Regular Disbursement System that uses academic terms.* (1) For an RDS institution that uses semesters, trimesters, quarters or other academic terms, the payment period is the semester, trimester, quarter or other academic term.

(2) If a student's progress is measured in clock hours, a student may not be paid for a subsequent payment period until he or she finishes the hours of the previous payment period for which the student has already been paid.

(3) This paragraph is effective as of March 1, 1980.

(g) *Payment period for an institution using the Alternate Disbursement System.* A payment period for an institution participating in the Basic Grant program under the Alternate Disbursement System (ADS institution) shall be calculated as follows:

(1) If an ADS institution uses semesters, trimesters, quarters or other academic terms and measures progress in credit hours, the payment period is the semester, trimester, quarter or other academic term.

(2) If an ADS institution measures progress in clock hours, or measures progress in credit hours but does not use academic terms, it shall have at least two payment periods. The payment periods shall be calculated as follows:

(i) If the student's academic year is within one award period and the student's educational program is at least one academic year—

(A) The first payment period is the period of time in which the student completes the first half of his or her academic year, and

(B) The second payment period is the period of time in which the student completes the second half of his or her academic year.

(ii) If the student's academic year is NOT within one award period or the student's educational program is LESS than a full academic year—

(A) The first payment period is the period of time in which the student completes the first half of the hours he or she is scheduled to complete within the award period, and

(B) The second payment period begins when the first payment period ends and ends when the student completes all hours he or she was scheduled to complete between the beginning of the second payment period and June 30.

(iii) A student with incompleting hours for the second payment period of any award period may complete them during the following award period. In this case, if the student's educational program is more than an academic year, the first payment period of the new award period begins when the student finishes all carried over hours for which he or she was paid.

3. In § 190.3, the introductory sentence is amended and paragraphs (e) and (f) are added, to read as follows:

§ 190.3 Institution of higher education.

An institution of higher education is a public, private nonprofit, proprietary, or postsecondary vocational institution.

(e)(1) In lieu of the credit or clock hour requirements of paragraphs (d)(1) and (d)(2) of this section, the Secretary may determine that an institution offers a six-month program of training if—

(i) He or she determines that the institution's course content and student work load requirements support that determination, and

(ii) The accrediting association that accredits the institution certifies that the program offered by the institution is equal in course content and student work load to the comparable clock or credit hour program described in paragraph (d) of this section.

(2) This paragraph (e) of this section is effective as of February 27, 1979.

(f) A postsecondary vocational institution is a public or other nonprofit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma, or

(ii) Have the recognized equivalent of a high school diploma;

(3) Is legally authorized to provide an education program beyond secondary education in the State in which the institution is physically located;

(4) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is accredited by a national recognized accrediting agency or association; and

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years if it is legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(20 U.S.C. 1141(a), 20 U.S.C. 1088(b) (3) and (4).)

4. In § 190.64, paragraph (c) is amended, to read as follows:

§ 190.64 Calculation of a Basic Grant for a payment period.

(c) Notwithstanding paragraphs (a) and (b) of this section—

(1) A student may not receive a Basic Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either \$200 at full funding or \$50 at less than full funding; and

(2) The amount of a student's award for an award period may not exceed his or her Scheduled Basic Grant award for that award period.

5. Section 190.65 is amended to read as follows:

§ 190.65 Calculation of a Basic Grant for a payment period which occurs in two award periods.

A student who enrolls in a payment period which is scheduled to occur in two award periods shall be paid in accordance with the following rules—

(a)(1) The entire payment period will be considered to occur within one award period.

(2) The institution will determine the award period in which the payment period will be placed.

(3) The determination made in paragraph (a)(2) of this section must be the same for all Basic Grant recipients for all payment periods in a program which begin on the same day.

(4) If the institution places the payment period in the first award period, it must pay the student with funds from the first award period.

(5) If the institution places the payment period in the second award period, it must pay the student with funds from the second award period.

(b) The institution may not make a payment which will result in the student receiving more than his/her Scheduled Basic Grant award for that award period.

(c)(1) If a term-based institution offers a series of mini-sessions which occurs in two award periods, the combined

sessions will be treated as one term. A student may not receive more than one term's award for completing any combination of these sessions.

(2) For such mini-sessions, a term-based institution must determine the student's enrollment status for the entire term. That enrollment status will be based upon—

(i) The total number of credits enrolled for in all sessions if that number is known when the award is calculated, or

(ii) A projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(20 U.S.C. 1070a.)

6. Section 190.79 is revised to read as follows:

§ 190.79 Educational purpose declaration.

(a) An institution may not pay a Basic Grant unless the student affirms or declares that he or she will use the grant solely for educational expenses in connection with attendance at the institution.

(b) The student may satisfy this requirement by filing either—

(1) A notarized affidavit, or

(2) A written statement.

(c) The statement or the affidavit must be on a form approved by the Secretary. Forms approved for this purpose are set forth in Appendix A.

(20 U.S.C. 1088g; 28 U.S.C. 1746.)

6. Appendix A is added to read as follows:

Appendix A—Affidavit of Educational Purpose

I affirm that I will use any funds I receive under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan or Guaranteed Student Loan programs solely for expenses related to attendance at

(Name of Institution)

I understand that I am responsible for repaying any funds that I receive which cannot reasonably be attributed to meeting my educational expenses related to attendance at

(Name of Institution)

I further understand that the amount of any repayment is based on regulations published by the Secretary of Education.

Signature (Sign only in presence of a Notary)
Academic period covered by award(s)

19 to 19
Month Year Month Year
Subscribed and sworn before me this day
of 19

My commission expires: _____

(Signature of Notary Public) _____

(Address of Notary Public) _____

Statement of Educational Purpose

I affirm that I will use any funds I receive under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, College Work-Study, National Direct Student Loan or Guaranteed Student Loan programs solely for expenses related to attendance at

(Name of Institution) _____

I understand that I am responsible for repaying any funds that I receive which cannot reasonably be attributed to meeting my educational expenses related at

(Name of Institution) _____

I further understand that the amount of any repayment is based on regulations published by the Secretary of Education.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date: _____

Academic period covered by award(s)

, 19 to , 19

Month Year Month Year

[FR Doc. 80-19003 Filed 6-23-80; 8:45 am]

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Register Federal

Tuesday
June 24, 1980

Part V

Department of Education

Basic Educational Opportunity Grant
Program; Final Regulations

DEPARTMENT OF EDUCATION

45 CFR Part 190

Basic Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY:

1. The Action Being Taken

The Secretary is amending the regulations for the 1980-81 Family Contribution Schedules for the Basic Educational Opportunity Grant Program.

2. The Circumstances That Created the Need for the Action

The regulations are being amended because of administrative policy decisions reflecting concerns expressed by the financial aid community about the treatment of dependent student income.

3. The Intended Effect of the Action

The regulation will allow a number of dependent students from poor families—who currently are not eligible for Basic Grants because of their own income—to qualify for that aid.

EFFECTIVE DATE: Generally regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the *Federal Register*. However, since this regulation applies to Basic Grants made for the period of July 1, 1980 through June 30, 1981, when the regulation becomes effective, it will apply retroactively to July 1, 1980.

FOR FURTHER INFORMATION CONTACT:

William Moran, Chief, Basic Grant Policy Section, or Brian Kerrigan, Basic Grant Program Specialist, Division of Program Development, ROB-3, Room 4318, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone No. (202) 472-4300.

SUPPLEMENTARY INFORMATION:

Waiver of Notice of Proposed Rulemaking

This regulatory change has been made in response to comments received from students and others in the financial aid community. The commenters expressed concern over inequities that were arising as a result of the treatment of dependent student income in the Basic Grant Family Contribution Schedule for the 1980-81 award period that was published in the *Federal Register* of April 30, 1980.

The Secretary has addressed most of these concerns in the revision to the Family Contribution Schedule and has

in this regulation, eliminated the major inequities in the treatment of the income of dependent student income.

The changes made in this regulation will affect the calculation of Basic Grant awards for the 1980-81 award period which begins on July 1, 1980. Because the Secretary is correcting a problem in the current regulations and because time is of the essence, the Secretary finds that the publication of a proposed rule in this instance would be unnecessary, impracticable and contrary to the public interest within the meaning of 5 U.S.C. 553(b), and is publishing this rule as a final regulation.

General Background

From the inception of the Basic Grant Program through the 1979-80 award period, the earned income of dependent students was not considered in determining eligibility for a Basic Grant. For purposes of income assessment, only the income of the dependent student's parents was taken into account. Over the years the program received considerable criticism for ignoring this potential student resource. This issue has been of particular concern to the House Committee on Intergovernmental Relations. In responding to this criticism, the Office of Education proposed, in a notice of proposed rulemaking (NPRM) published on July 26, 1979, to assess dependent student income in determining Basic Grant eligibility for the 1980-81 award period. Copies of that NPRM were mailed to participating postsecondary institutions and to various education organizations, and public comment was solicited. Additionally, a Congressional hearing was held on the proposed regulations. Relatively few comments were received on the proposal to assess dependent student income. And, of those which were received, the response to the proposal was mixed. There was not strong or overwhelming opposition to the proposal. Thus, when the final 1980-81 Family Contribution Schedules were drafted, the assessment of dependent student income was included in the formula.

However, after the publication of the final regulation, the financial aid community voiced increased dissatisfaction with the treatment of dependent student income. It became apparent that the assessment of dependent student income—as outlined in the April 30 publication of the final regulations—worked inequitably for a number of students. Thus, the assessment of dependent student income in the calculation of a student's eligibility for a Basic Grant has caused many students and other concerned

individuals in the financial aid community to request that the Department of Education reconsider its position with respect to that aspect of the eligibility formula.

Summary of the Issue

The current regulation on the assessment of dependent student income, as published on April 30, 1980, is as follows:

§ 190.34a Computation of the expected family contribution for a dependent student from the effective student income

(a) Determine the student's discretionary income by deducting from the effective student income the relevant dependent student offset.

Dependent Student Offset

Single student.....	\$2,650
Married student.....	3,850

(b) If the student's discretionary income is a positive amount, multiply it by one of the following figures to determine the expected contribution from effective student income:

- (1) 75 percent for the single dependent student, or
- (2) 25 percent for the married dependent student.

If the student's discretionary income is negative, there is no expected contribution from the effective student income.

(20 U.S.C. 1070a(a)(3)(B))

In incorporating the assessment of dependent student income into the formula, we originally anticipated that eight to ten percent of the dependent students would have sufficient income for that income to be assessed. However, current data indicates that approximately 15 percent of the dependent student population is being affected. Some of these dependent students have fairly large incomes of their own, but come from impoverished families. As such, they often use much of their earnings to help support those families and, thus do not have as much money available for educational expenses as might otherwise be expected.

With respect to these students, we are issuing an emergency final regulation to change the treatment of dependent student income.

The revision to the current regulation will increase the appropriate dependent student offset in those instances where parental income is so low that it produces negative discretionary income. "Negative discretionary income", under the Basic Grant Family Contribution Schedule, is produced when the sum of the offsets against income provided in § 190.34 plus the federal taxes paid by the parents exceeds the parents' income. In the current regulation the parents' negative discretionary income is used as

an offset against any contribution from parental assets. (See § 190.35(d).) Under this revision the amount of negative discretionary income that will not be used as an offset against assets will be added to the normal dependent student offset.

For example, if the parental effective family income is \$10,000 (adjusted gross income of \$11,000 and Federal income tax paid of \$1,000) and the sum of the family size offset and other offsets equals \$12,000, the parents would have a negative discretionary income of \$2,000 (\$10,000 of income minus \$12,000 of offsets).

If the parents have less than \$25,000 in net assets, there would be no contribution from parental assets. Thus, none of the negative \$2,000 would be used to offset the normal contribution from parental assets (§ 190.35). Therefore, the entire \$2,000 amount of negative discretionary income would be added to the normal dependent student offset (either \$2,650 or \$3,850). This would make the dependent student offset for a married dependent student in this example \$5,850 (\$3,850 + \$2,000 = \$5,850.) That \$5,850 figure would be subtracted from the dependent student income figure before the 25 percent assessment step is performed. For a single dependent student in this example, a \$4,650 offset would be subtracted from dependent student income before the 75 percent assessment step is performed (\$2,650 + \$2,000 = \$4,650).

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 13.539, Basic Educational Opportunity Grant Program)

Dated: June 19, 1980.

Steven A. Minter,

Acting Secretary of Education.

Subpart C of Part 190 of Title 45 of the Code of Federal Regulations is amended as follows:

Existing § 190.34a is revoked as of July 1, 1980, and effective July 1, 1980, a new § 190.34a is added as follows:

§ 190.34a Computation of the expected family contribution for a dependent student from the effective student income.

The expected family contribution for a dependent student from effective student income is calculated as follows:

(a) Determine the student's discretionary income by deducting from the effective student income the relevant dependent student offset.

(1) Where the parental discretionary income is positive, the offset is as follows:

Dependent Student Offset

Single student.....	\$2,650
Married student	3,850

(2) Where the parental discretionary income is negative, the relevant offset in subparagraph (1) of this paragraph is increased by the amount of that negative parental discretionary income minus any amount of the negative parental discretionary income that will be used as an offset against the contribution from parental assets in § 190.35(d).

(b) If the student's discretionary income is a positive amount, multiply it by one of the following figures to determine the expected contribution from effective student income:

(1) 75 percent for the single dependent student, or

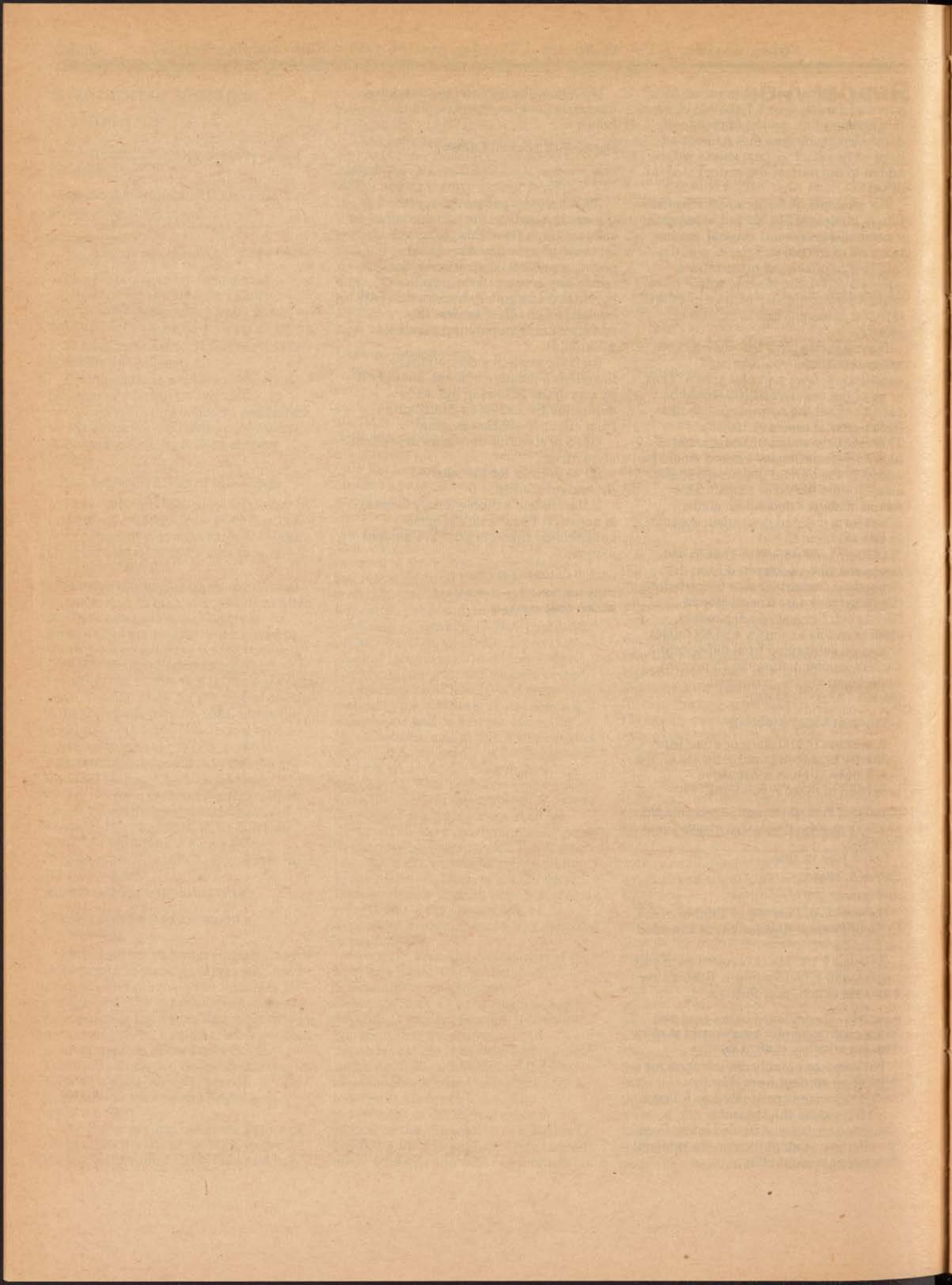
(2) 25 percent for the married dependent student.

If the student's discretionary income is negative, there is no expected contribution from the effective student income.

(20 U.S.C. 1070a(a)(3)(B))

[FR Doc. 80-19004 Filed 6-23-80; 8:45 am]

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Federal Register

Vol. 45, No. 123

Tuesday, June 24, 1980

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- 523-5266 Public Law Numbers and Dates, Slip Laws, U.S.
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Other Publications and Services:

- 523-5239 TTY for the Deaf
523-5230 U.S. Government Manual
523-3408 Automation
523-4534 Special Projects
523-3517 Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, JUNE

37175-37396	2
37397-37680	3
37681-37800	4
37801-38022	5
38023-38334	6
38335-39236	9
39237-39492	10
39493-39788	11
39789-40092	12
40093-40560	13
40561-40962	16
40963-41118	17
41119-41388	18
41389-41618	19
41619-41894	20
41895-42234	23
42235-42588	24

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

465.....37397

3 CFR

Administrative Orders:

Presidential Determination:

No. 80-19 of
May 28, 1980.....37681

Reorganization Plans:

No. 1 of 1980.....40561

Proclamations:

3279 (Amended by
Proc. 4766).....41899

4744 (Revoked by
Proc. 4766).....41899

4762.....39237

4762 (Revoked by
Proc. 4766).....41899

4763.....41119

4764.....41621

4765.....41895

4766.....41899

4767.....42235

Executive Orders:

12078 (Amended by
EO 12219).....41897

12216.....41619

12217.....41623

12218.....41625

12219.....41897

5 CFR

213.....38023-38024, 41627

351.....41627

410.....40963

2504.....41121

Proposed Rules:

Ch. 1.....37610

330.....39277

352.....37452

536.....40990

720.....38061

6 CFR

705.....37397, 38335, 41304

706.....41304

707.....41304

7 CFR

10.....37175

273.....40093

282.....40094

301.....38024

318.....42237

711.....37398

723.....40095

724.....40095

725.....40096, 40097

726.....40095, 42242

908.....37801, 38339, 39789,
41389

910.....37683, 38033, 40097,
41628, 42242

911.....39854

913.....40565

923.....38034

925.....40565

944.....39854

947.....37178

971.....41389

985.....41901

991.....41901

1004.....39239

1207.....41391

1438.....39493

1474.....42244

1701.....37399, 40098, 40963

1804.....39789

1821.....39789

1822.....39789

1872.....39789

1901.....39789

1924.....39789

1933.....39789

1942.....39789

1943.....39789

1944.....39789

1945.....39789

1980.....41628

3100.....41583

Proposed Rules:

250.....42303

411.....41640

725.....39277

760.....37453

910.....42313

916.....38386, 41962

917.....38062, 38387

921.....42313

924.....42314

930.....38063

982.....42315

999.....39507

1007.....40606

1493.....37854

1701.....37454, 38064, 41646

1980.....41647

2842.....38064

8 CFR

204.....41392

207.....37392

208.....37392

209.....37392

238.....38339, 40964, 40965

242.....41392

245.....37392

343b.....38340

9 CFR

3.....37616

51.....40965

78.....38035

83.....	40098
92.....	38036
113.....	40099
Proposed Rules:	
83.....	38071
325.....	40129

10 CFR

30.....	41393
32.....	38340
35.....	39829, 41393
50.....	40101
51.....	40101
73.....	37399
95.....	37410
140.....	37410
205.....	37683, 42246
210.....	40104
212.....	38038, 39240, 40104, 40106, 41902
445.....	37685
500.....	38276
501.....	38276
502.....	38276
503.....	38302
504.....	40966
505.....	38302
506.....	40966
507.....	38276
570.....	41330
1040.....	40514

Proposed Rules:

34.....	39856
71.....	39519
211.....	37697, 40078, 42222
212.....	37697, 42222
455.....	39856
474.....	39520
503.....	42190
504.....	42190
506.....	42190
622.....	41649
624.....	41649

12 CFR

201.....	40108, 41629
204.....	39494
217.....	37685, 41124
220.....	40967, 40968
229.....	39495
341.....	37179
343.....	37179
522.....	40108
531.....	40109
590.....	38342
605.....	39495
614.....	39496
701.....	39241, 41903
1204.....	37801-37803, 40109

Proposed Rules:

Ch. VII.....	41438
7.....	40613
201.....	40130
211.....	41153
226.....	41437
543.....	40132
552.....	40132
618.....	39507
701.....	39279
1204.....	38072, 38388

13 CFR

111.....	39496
305.....	39242

Proposed Rules:

Ch. III.....	37972
Ch. V.....	37972
120.....	37454

14 CFR

11.....	38342
21.....	38342
25.....	38342, 41586
29.....	38342
37.....	38342
39.....	37179-37181, 37805- 37811, 38349, 39829-39833, 40571, 41394, 41905
71.....	37811, 38352, 39835- 39837, 40572, 41400, 41906- 41913
73.....	38352, 41913
91.....	38342
95.....	41914
97.....	37181, 39837
121.....	38342, 41586
127.....	38342, 41586
135.....	38342
159.....	40572
207.....	40572
208.....	40574
212.....	40575
214.....	40575
249.....	37812
399.....	40969, 42254

Proposed Rules:

Ch. I.....	38073, 41439, 41962
39.....	37221, 37222, 38402, 40615
71.....	37858, 38404, 39857, 40616, 41449, 41965
121.....	41596
139.....	39857
221.....	42317
222.....	42318
250.....	42317
255.....	42317
298.....	42317
385.....	42318
399.....	40994
1252.....	40994

15 CFR

10.....	41401
17a.....	41153
315.....	42214
368.....	40575
370.....	37183
373.....	37415
374.....	37415
376.....	37415
379.....	37183, 37435
385.....	37415
386.....	37183
399.....	37415
615.....	42214

Proposed Rules:

Ch. I.....	37972
Ch. II.....	37972
Ch. III.....	37972
Ch. VIII.....	37972
Ch. XII.....	37972
19.....	37374
938.....	39507, 39511

16 CFR

1.....	39244
2.....	39244
3.....	39244

4.....	39244
13.....	37686, 38039, 38352
305.....	40974
460.....	37674
1508.....	37418

Proposed Rules:

13.....	39865, 41650
439.....	41156
705.....	37386
1405.....	39434

17 CFR

200.....	40975
240.....	37687, 39838, 41125
241.....	41920
249.....	39838
256.....	41135

Proposed Rules:

1.....	42321
12.....	42321
16.....	39280
140.....	42324
211.....	40134
229.....	40134
240.....	40134, 40145, 41156
249.....	40134, 40145
270.....	38407

18 CFR

1.....	38354
141.....	37420, 38354
260.....	37812
271.....	37185
281.....	39497
282.....	37185
292.....	38040

Proposed Rules:

3.....	41608
12.....	41608
271.....	41449
281.....	39283
282.....	38080, 40617
284.....	41450

19 CFR

22.....	39244
54.....	38040, 38355
103.....	40975
171.....	40975
353.....	39498

20 CFR

404.....	41931
651.....	39454
653.....	39454
658.....	39454

Proposed Rules:

Ch. I.....	37648
Ch. III.....	40356
Ch. IV.....	37648
Ch. V.....	37648
Ch. VI.....	37648
Ch. VII.....	37648
404.....	39309
416.....	41453

21 CFR

Ch. I.....	40976
14.....	41630
81.....	42255
101.....	37420
102.....	39247
103.....	37422
146.....	39251

175.....	39251
177.....	39252
207.....	38042
429.....	40110
431.....	40110
444.....	42256
510.....	37424, 38048, 41630 42260

514.....	40110
522.....	37425
556.....	42262
558.....	37424, 38048-38049, 41630, 42262
561.....	41932
573.....	38049
1000.....	40976
1308.....	41933, 42264

Proposed Rules:

Ch. I.....	40356
Ch. II.....	40576
103.....	40153
105.....	41652
163.....	40999
310.....	37455
330.....	41653
561.....	41157
589.....	40999
640.....	40999
1030.....	40999

22 CFR

41.....	39499
208.....	37688

Proposed Rules:

6.....	37456
6f.....	37456
171.....	37456

23 CFR**Proposed Rules**

625.....	40062, 41600
646.....	40062
655.....	40062, 41600

24 CFR

203.....	41935
220.....	38356
234.....	41935
300.....	41631
390.....	40556
811.....	41382
841.....	40868
865.....	41936
888.....	40111
1710.....	40474
1715.....	40474
1720.....	40474
1730.....	40474

Proposed Rules:

115.....	37697, 40999
203.....	38410, 41158
221.....	41158
222.....	41158
235.....	41158
570.....	40155, 40954
888.....	40155

25 CFR

221.....	37688
256.....	41632
700.....	41408

Proposed Rules:

251.....	42332
----------	-------

26 CFR					
1.....	38050, 40113, 40979				
7.....	38050				
31.....	39499				
Proposed Rules:					
1.....	39512, 39869				
48.....	38411				
27 CFR					
4.....	40538				
5.....	40538				
7.....	40538				
9.....	41632				
19.....	41838				
Proposed Rules:					
19.....	38258, 41850				
70.....	38258				
240.....	38258				
245.....	38258				
250.....	38258				
270.....	38258, 38271				
275.....	38258, 38271				
28 CFR					
0.....	39841				
20.....	40114				
42.....	37620				
43.....	39841				
Proposed Rules:					
22.....	40156				
23.....	40156				
42.....	41001				
62.....	40159				
29 CFR					
40.....	40985				
42.....	39486				
102.....	37425				
697.....	40601, 40985				
1602.....	41135				
1610.....	40603				
1613.....	41634				
1910.....	41634				
2530.....	40987				
Proposed Rules:					
Subtitle A.....	37648				
Ch. II.....	37648				
Ch. IV.....	37648				
Ch. V.....	37648				
Ch. XVII.....	37648				
Ch. XXV.....	37648				
Ch. XXVI.....	41653				
4.....	42332				
1613.....	38083				
1910.....	40166, 41012				
1926.....	41015				
2550.....	38084				
2610.....	38415				
30 CFR					
Ch. II.....	40619				
211.....	41410				
221.....	41410				
223.....	41410				
225.....	41410				
225a.....	41410				
226.....	41410				
231.....	41410				
241.....	41410				
250.....	37816-37817				
270.....	41410				
271.....	41410				
715.....	39446				
816.....	37818, 39446				
817.....	39448				
943.....	41136, 41937				
Proposed Rules:					
Ch. I.....	37648				
Ch. VII.....	37223, 37697, 38088,				
	41158-41164, 41456, 41654,				
	41969-41981				
55.....	38087				
56.....	38087				
57.....	38087				
70.....	39310				
71.....	39310, 42333				
90.....	39310, 42333				
700.....	42333				
701.....	42333				
715.....	40166				
716.....	39448, 40166				
780.....	41166				
785.....	39448				
816.....	40166				
817.....	40166				
826.....	40166				
884.....	41659				
926.....	41659				
31 CFR					
15.....	39841				
103.....	37818				
315.....	41137				
353.....	41137				
535.....	37679, 37688				
32 CFR					
101.....	41138				
205.....	41138				
293.....	41138				
536.....	39253				
562.....	39502				
706.....	41412				
888a.....	39502				
907.....	39502				
1611.....	40577				
1612.....	40577				
1613.....	40577				
1615.....	40577				
1617.....	40577				
1619.....	40577				
1621.....	40577				
Proposed Rules:					
1611.....	40621				
1612.....	40621				
1613.....	40621				
1615.....	40621				
1617.....	40621				
1619.....	40621				
1621.....	40621				
32A CFR					
Proposed Rules:					
Ch. VI.....	37972				
33 CFR					
100.....	41940				
117.....	39845, 39846, 41413,				
	41941				
147.....	37186				
165.....	37187, 41941				
Proposed Rules:					
110.....	41458, 41981				
117.....	39871				
128.....	40621				
183.....	38417				
235.....	39412				
34 CFR					
5b.....	37426				
30.....	37426				
73.....	37426				
100.....	37426				
104.....	37426				
106.....	37426				
36 CFR					
251.....	38324				
920.....	38056				
37 CFR					
201.....	41414				
Proposed Rules:					
Ch. I.....	37972				
38 CFR					
17.....	38356, 39846, 41942				
36.....	38056				
Proposed Rules:					
Ch. I.....	41169				
21.....	41661				
39 CFR					
10.....	40114, 41138				
111.....	37426-37427, 40114				
Proposed Rules:					
111.....	38419				
40 CFR					
52.....	37188, 37192, 37689,				
	37821, 39503, 40578, 40579,				
	40987, 41942, 42265-42283				
55.....	41415				
57.....	42514				
60.....	41852				
62.....	37431				
80.....	37197				
81.....	39255, 42283				
86.....	40030, 41943				
122.....	41418, 42472				
125.....	41418				
141.....	41140				
146.....	42472				
162.....	39848				
180.....	39257, 39503, 41419,				
	41946				
403.....	41419				
418.....	37198				
423.....	37432				
426.....	37198				
432.....	37198				
Proposed Rules:					
51.....	37466				
44.....	42375				
52.....	37224, 37699, 38419,				
	39310, 40167, 40169, 40623,				
	41016, 41018, 41983, 42335				
60.....	39766				
80.....	37225				
81.....	41018				
86.....	38422				
112.....	40174				
162.....	38087, 39311				
169.....	41024				
173.....	40175				
180.....	37700, 40175, 41171				
192.....	41459				
41 CFR					
Ch. 1.....	39504				
Ch. 14.....	39504				
Ch. 101.....	37199, 37432				
1-15.....	39848				
3-4.....	37693				
101-11.....	37433				
101-17.....	37199				
101-18.....	37199				
101-19.....	37199				
101-25.....	41947				
101-26.....	41947				
101-45.....	37693, 38369				
105-61.....	39258				
Proposed Rules:					
Ch. 25.....	39871				
42 CFR					
57.....	40581, 41420, 41948				
59.....	37433				
405.....	41635				
421.....	42174				
Proposed Rules:					
Ch. I.....	40356				
Ch. II.....	40356				
Ch. III.....	40356				
Ch. IV.....	40050, 40356				
405.....	37858, 41794				
441.....	37858				
447.....	37466, 39872, 41661				
481.....	41794				
482.....	41794				
43 CFR					
2710.....	39416				
2730.....	39416				
2750.....	39416				
2760.....	39416				
Proposed Rules:					
2200.....	41860				
3800.....	41024				
Public Land Orders:					
5726.....	37438				
5727.....	37439, 40115				
5728.....	37837				
5729.....	38369				
5730.....	41420				
44 CFR					
2.....	41421				
10.....	41141				
64.....	37207, 41146, 42290,				
	42300				
65.....	37442, 37694, 39258,				
	41148				
67.....	37208-37209				
70.....	38370-38379, 41948				
80.....	41949				
81.....	41949				
82.....	41949				
83.....	41949				
205.....	37440				
Proposed Rules:					
67.....	37226, 37227, 37861,				
	39312-39315, 40624, 40625				
	42340				
350.....	42341				
45 CFR					
3.....	41820				
74.....	37666, 38380				
100c.....	37442				
150.....	42284				
168.....	42572				
174.....	42572				
175.....	42572				
176.....	42572				
177.....	42572				
190.....	42572-42586				
304.....	41428				
1063.....	39849				

1067.....39849	47 CFR	450.....37212	1323.....39519
1069.....41956	0.....39850, 41149	451.....37212	1324.....39519
1211.....39270	19.....39850	452.....37212	
Proposed Rules:	64.....40115, 41429	453.....37212	50 CFR
Subtitle A.....40356	73.....37210, 37838, 38057,	571.....38380, 40585, 41959	20.....37847
Subtitle B.....40356	41149	572.....40595	222.....39875
Ch. VI.....39871	74.....37839	800.....37842	223.....39875
63.....37700	78.....41958	1033.....37219, 37220, 37843-	224.....39875
100b.....39708	81.....41635	37845, 38057-38059, 38382,	225.....39875
116.....39712	97.....40116, 40117	39275, 39852, 40596, 40597,	226.....39875
116a.....39712	Proposed Rules:	40599, 41429, 41637, 41959-	227.....39875
1050.....37867	Ch. I.....41986	41960, 42286-42289	230.....37451
1171.....41661	2.....37237, 42347	1041.....37218	255.....37852
1336.....39316	15.....42347	1047.....39853	260.....39275
46 CFR	22.....37237	Proposed Rules:	285.....40118
66.....38384, 41429	67.....41459	Ch. X.....39316, 39317	611.....37695, 39876, 41433,
283.....37442	68.....37704	71.....38423	41961
527.....37694	73.....37238-37246, 37468,	171.....40627	672.....41434
536.....38057	37868-37869, 40176-40186,	391.....39872	Proposed Rules:
	40626, 41171	571.....41468	Ch. II.....37972
Proposed Rules:	74.....40187	575.....37870	Ch. VI.....37972
Ch. II.....37972	87.....40188	1047.....39874	17.....40958, 41172, 41322,
Ch. IV.....37703	90.....37237	1033.....41469	41326
531.....41024	97.....40192	1056.....39519	91.....39317
536.....41024	49 CFR	1100.....39317	216.....41173
	229.....39851	1320.....39519	651.....41986
		1321.....39519	661.....37870
		1322.....39519	676.....41987

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HHS/FDA		DOT/SLSDC	HHS/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of

the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

List of Public Laws

Last Listing June 23, 1980

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.